

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
for the GWF Tracy Peaker Plant)	01-AFC-16
Project in San Joaquin County)	
_____)	

HOLIDAY INN EXPRESS HOTEL & SUITES

LODI ROOM

3751 TRACY BOULEVARD

TRACY, CALIFORNIA 95304

WEDNESDAY, MARCH 6, 2002

5:00 P.M.

Reported by:
Valorie Phillips
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Pernell, Commissioner, Presiding Member

Robert Laurie, Commissioner, Associate Member

HEARING OFFICER AND ADVISORS PRESENT

Cheryl Tompkin, Hearing Officer

Ellie Townsend-Smith, Advisor to Commissioner
Pernell

STAFF AND CONSULTANTS PRESENT

Kerry A. Willis, Staff Counsel

Cheri Davis, Project Manager

Steve Baker, Consultant

Susan Lee, Consultant

Natasha Nelson, Consultant

Richard Latteri, CEC Planner II

Sally Salavea, Consultant

PUBLIC ADVISER

Robert Mendonca, Public Adviser

Grace Bos, Assistant Public Adviser

APPLICANT

John P. Grattan, Esq., Counsel for Applicant
Grattan and Galati

Irwin D. Karp, Esq., Counsel for Applicant
Grattan and Galati

David A. Stein, P.E., Senior Project Manager, URS

APPLICANT (continued)

Robert B. Weisenmuller, Ph.D., MRW & Associates

Hal Moore, P.E., GWF

Rich Corvello, Assistant Business Manager, Int'l
Brotherhood of Electrical Workers, Local No. 595

Douglas Wheeler, VP, Business Development, GWF

Mark Kehoe, Environmental and Safety Compliance
Manager

INTERVENORS PRESENT

Robert Sarvey

Jim Hooper

Irene Sundberg

Nicholas Pinhey, City of Tracy

Howard Seligman, Esq., on behalf of Charles Tusó
family

Dennis Nobel, Esq.

ALSO PRESENT

Bill Van Herwig, Biologist

Dr. Robert Carnachan

Lynn G. Bedford, Board of Supervisors, San Joaquin
County

Michael Boyd, on behalf of Robert Sarvey

Susan Sarvey

Wayne Livingston

Harold Timmins

James Miner

ALSO PRESENT (continued)

Twyla Summers

Todd Summers

Charles Tusso

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

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1 P R O C E E D I N G S

2 5:00 p.m.

3 PRESIDING COMMISSIONER PERNELL: Good
4 evening, ladies and gentlemen. It's good to be
5 back in Tracy. This is the beginning of a formal
6 evidentiary hearing on the GWF Energy LLC
7 application for certification for the GWF Tracy
8 Peaker Project, a normal 169-megawatt simple-cycle
9 gas-fired power plant that will be located
10 southwest of the City of Tracy.

11 My name is Commissioner Pernell. I am
12 the presiding member of the committee in charge of
13 this project. The associate member is
14 Commissioner Robert Laurie. Also on the dais is
15 my adviser, Ellie Townsend-Smith, and our hearing
16 officer for this evening will be Ms. Tompkin,
17 Cheryl Tompkin.

18 Before we proceed, I'd like to briefly
19 explain how we're going to conduct the hearing
20 this evening. Ms. Tompkin will go into depth on
21 it a little bit later, but for the purpose of
22 these evidentiary hearings, it's to establish a
23 factual record necessary to reach a decision in
24 the case.

25 Witnesses testify under oath and are

1 subject to cross examination. There are numerous
2 technical areas that must be addressed in this
3 manner during the five days that are currently
4 scheduled for this hearing. The public will be
5 allowed to comment, but at the end of the evening,
6 after we've heard all of the evidentiary hearings
7 and had our witnesses sworn in, cross examined,
8 etc.

9 At this time I'd like to give
10 Commissioner Laurie a chance to make a statement.

11 COMMISSIONER LAURIE: Thank you,
12 Commissioner Pernell. I have no comment at this
13 time.

14 PRESIDING COMMISSIONER PERNELL: Thank
15 you, Commissioner Laurie.

16 I'd like to now turn the hearing over to
17 our hearing officer, Ms. Tompkin.

18 HEARING OFFICER TOMPKIN: Thank you,
19 Commissioner Pernell. Let me start by asking the
20 parties to identify themselves, and we'll begin
21 with the applicant.

22 APPLICANT COUNSEL GRATTAN: Yes. I'm
23 John Grattan. I'm counsel for the applicant, and
24 at my right is David Stein, who is with URS, who
25 is our chief technical consultant and URS is the

1 consulting firm. And on my right is Irwin Karp
2 who is of counsel and assisting us here. Doug
3 Wheeler, who is the vice president for project
4 development for GWF is in the audience, as well as
5 are a number of the GWF team and witnesses. And I
6 guess I would prefer to introduce them as they are
7 requested or needed.

8 HEARING OFFICER TOMPKIN: All right.
9 Thank you, Mr. Grattan.

10 And would staff please introduce
11 themselves.

12 STAFF COUNSEL WILLIS: Thank you. I'm
13 Kerry Willis. I'm staff counsel and I represent
14 the staff in these proceedings as an independent
15 party, and to my left is Cheri Davis, who is the
16 project manager.

17 HEARING OFFICER TOMPKIN: Thank you,
18 Ms. Willis.

19 Would the public adviser please make
20 herself known.

21 PUBLIC ADVISER MENDONCA: Thank you. My
22 name is Roberta Mendonca and I am the Commission's
23 public adviser.

24 HEARING OFFICER TOMPKIN: Thank you,
25 Ms. Mendonca. We also have --

1 PUBLIC ADVISER MENDONCA: Also assisting
2 me this evening is Grace Bos, who is also in the
3 Public Adviser's office. She's stepped out of the
4 room a minute.

5 PRESIDING COMMISSIONER PERNELL: Grace,
6 please raise your hand.

7 HEARING OFFICER TOMPKIN: All right,
8 thank you.

9 We also have several interveners this
10 evening, and I'm going to ask those who are
11 present to please identify themselves. And we'll
12 begin with the woman who is sitting at the table.

13 INTERVENOR SUNDBERG: Irene Sundberg.

14 HEARING OFFICER TOMPKIN: And if you're
15 affiliated with an organization, could you please
16 identify that organization as well.

17 INTERVENOR NOBEL: Dennis Nobel,
18 attorney at law.

19 HEARING OFFICER TOMPKIN: Thank you.

20 INTERVENOR SARVEY: Robert Sarvey.

21 HEARING OFFICER TOMPKIN: Thank you,
22 Mr. Sarvey.

23 INTERVENOR SELIGMAN: Howard Seligman,
24 attorney representing Charles Tusso.

25 HEARING OFFICER TOMPKIN: Thank you.

1 INTERVENOR PINHEY: Nicholas Pinhey,
2 City of Tracy.

3 HEARING OFFICER TOMPKIN: Thank you.
4 Are there any other interveners present this
5 evening?

6 Then at this point I'd like to give a
7 little bit of background. Let me note that these
8 are the evidentiary hearings for the proposed GWF
9 Tracy peaker project. The committee noticed the
10 hearing scheduled for today, March 6th, and for
11 March 7th, 8th, 13th, and 14th, and a notice
12 issued February 20th, 2002.

13 The purpose of the evidentiary hearings
14 is to establish the factual record necessary to
15 reach a decision on the application for
16 certification filed by GWF Energy. This is done
17 through the taking of written and oral testimony
18 and receipt of exhibits from parties. Witnesses
19 testify under oath or affirmation and are subject
20 to cross examination. As Commissioner Pernell
21 noted, these hearings are more structured than the
22 committee conferences and informal staff workshops
23 which have already occurred.

24 A party sponsoring a witness during
25 these proceedings shall briefly establish the

1 witness's qualifications and have the witness
2 orally summarize his or her testimony before
3 requesting that that testimony be moved into
4 evidence. Relevant exhibits may be offered into
5 evidence at that time as well. Multiple witnesses
6 may testify as a panel as necessary.

7 At the conclusion of a witness's direct
8 testimony, the committee will provide all other
9 parties with an opportunity for cross examination.
10 The committee may also question witnesses. That
11 will then be followed by redirect and recross
12 examination if appropriate.

13 In addition, both applicant and staff
14 have submitted sworn declarations for several
15 topics that will be discussed during the course of
16 these proceedings. The revised topic and witness
17 schedule shows those topics. It is anticipated
18 that neither the committee nor the parties will
19 wish to cross examine in these areas or ask
20 technical questions beyond the general knowledge
21 of the project manager, since there does not
22 appear to be any dispute in these areas.

23 Upon conclusion of all topic areas,
24 members of the public will be permitted to offer
25 unsworn public comment. Public comment is not

1 testimony, but may be used to explain evidence in
2 the record.

3 Before we go any further, I'd also like
4 to point out a few things, and this is especially
5 directed toward the lay interveners. First, as I
6 think everyone already realizes, unless you have
7 prefiled testimony for your witnesses as directed
8 by the hearing order in this case, you will not be
9 allowed to have witnesses offer direct testimony.
10 When cross examining a witness, do not be
11 repetitive with your questions. If the question
12 has been asked before, that is sufficient for
13 purposes of the record. There is no need to re-
14 ask the question several times.

15 Parties interested in the same matter
16 are encouraged to consolidate their presentations
17 or their questionings if at all possible. This is
18 in order to minimize duplication and conserve our
19 limited hearing time. The questioning must be
20 limited to relevant matters within the scope of
21 the witness's testimony; for example, if a witness
22 is testifying on geology, you cannot ask him
23 questions on cultural resources or some other area
24 that is not related to his or her field of
25 expertise. The question must be within the scope

1 of the witness testimony.

2 I would also like to advise all parties
3 not to argue with the witness. Often a witness
4 will not give an answer that a party desires;
5 however, the response is the witness's answer, and
6 it is not permissible to engage in a debate with
7 the witness to try to force him or her to change
8 that answer.

9 Next I would like to remind the parties
10 not to testify while cross examining a witness.
11 Cross examination is designed to elicit a response
12 from a witness regarding a specific issue. It is
13 not a party's opportunity to comment on a
14 witness's response or offer an opinion regarding a
15 particular issue. When you are asking a question,
16 it is helpful if you refer to a specific page of
17 the witness testimony and/or an exhibit he or she
18 is sponsoring. This will guide the witness and
19 the committee so that we can better understand the
20 question.

21 Direct testimony must be on matters
22 within the witness's personal knowledge; however,
23 there are somewhat different rules for witnesses
24 who qualify as experts. Experts, by virtue of
25 their education and experience, are allowed to

1 render expert opinion based on studies, reports
2 and similar information which they may not have
3 personally authored but which they have reviewed.

4 Those are the main points I wanted to
5 make at this point in the proceeding. Does anyone
6 or any party have a question before we begin?
7 Mr. Seligman?

8 INTERVENOR SELIGMAN: There was a
9 request filed, a written request filed by the
10 applicant's attorney to exclude a witness that I
11 had designated, based on the fact that no written
12 testimony was provided, absent good cause. I
13 filed a response to that. The question that I
14 have is when will that request and my objections,
15 response to that be considered?

16 HEARING OFFICER TOMPKIN: When was your
17 response filed?

18 INTERVENOR SELIGMAN: It was filed and
19 faxed two days ago, and the request was filed last
20 week by the applicant's attorney.

21 HEARING OFFICER TOMPKIN: And can you
22 tell me in what area specifically --

23 INTERVENOR SELIGMAN: The witness that
24 was designated in my witness list was Mr. Ben
25 Hulls, who is the director of the San Joaquin

1 County Planning Department, who was designated by
2 Mr. Tusso as a witness to provide testimony in
3 connection with the written findings that he had
4 submitted to the staff, as part of the staff
5 assessment, in connection with the San Joaquin
6 County findings to determine the extent to which
7 there was compliance with local rules and
8 regulations.

9 HEARING OFFICER TOMPKIN: And was he
10 going to -- was that in the area of land use?

11 INTERVENOR SELIGMAN: Yes.

12 HEARING OFFICER TOMPKIN: That would in
13 the area of land use.

14 INTERVENOR SELIGMAN: Yes.

15 HEARING OFFICER TOMPKIN: There have
16 been -- The motions that were filed by staff and
17 applicant seek to preclude the testimony of
18 several witnesses. The way we're going to handle
19 that is to argue the particular witness at the
20 time that we deal with that topic area. So, for
21 example, land use is scheduled for March 13th.

22 INTERVENOR SELIGMAN: Correct.

23 HEARING OFFICER TOMPKIN: So at that
24 time you can have your witness available and I'll
25 permit the parties to argue their motions in

1 opposition to the motion regarding whether to
2 include the testimony as sworn testimony.

3 INTERVENOR SELIGMAN: So, as I
4 understand it, then, I should then be prepared,
5 depending upon the ultimate ruling, to have the
6 witness go forward.

7 HEARING OFFICER TOMPKIN: To go forward.

8 INTERVENOR SELIGMAN: All right.

9 HEARING OFFICER TOMPKIN: I mean, they
10 can still offer comment, even if they are not
11 permitted to testify as an expert, so that would
12 be part of the record.

13 INTERVENOR SELIGMAN: All right.

14 APPLICANT COUNSEL GRATTAN: If I might,
15 Madam Hearing Officer, I would gently suggest that
16 applicant for one would be more willing to
17 consider some flexibility in this case, given that
18 the witness is, in fact, the director of the
19 County Planning and Development Department, if
20 some testimony was prefiled, we have until the
21 13th before you're going to deal with the matter.
22 The whole idea of prefiling testimony is to avoid
23 surprise and prejudice.

24 I'd feel a lot better if I could see
25 some testimony.

1 INTERVENOR SELIGMAN: It was my intent
2 now --

3 APPLICANT COUNSEL GRATTAN: Timely
4 filed, now, you know, as opposed to a week ago.

5 PRESIDING COMMISSIONER PERNELL: One
6 second. It appears that because we're not going
7 to hear that particular issue until the --

8 HEARING OFFICER TOMPKIN: The 13th.

9 PRESIDING COMMISSIONER PERNELL: -- the
10 13th, and if your witness can file some testimony
11 and satisfy the applicant and staff, perhaps
12 they'll withdraw their objection. But we're not
13 here to settle that question tonight.

14 INTERVENOR SELIGMAN: That's fine. The
15 direction has been given. Thank you.

16 PRESIDING COMMISSIONER PERNELL: Thank
17 you.

18 HEARING OFFICER TOMPKIN: Thank you.

19 PRESIDING COMMISSIONER PERNELL: Are
20 there any other interveners that haven't been
21 introduced? Are you an intervener, sir?

22 INTERVENOR HOOPER: Yes.

23 PRESIDING COMMISSIONER PERNELL: Would
24 you state your name for the record, please.

25 INTERVENOR HOOPER: Yeah, my name is Jim

1 Hooper.

2 HEARING OFFICER TOMPKIN: All right.

3 PRESIDING COMMISSIONER PERNELL: Are
4 there any other --

5 HEARING OFFICER TOMPKIN: Mr. Sarvey?

6 INTERVENOR SARVEY: Will we be going
7 through our witness list to clarify a few things
8 or are we going to get right into the heart of the
9 matter? Because I do have some issues I'd like to
10 clarify before we get started here.

11 HEARING OFFICER TOMPKIN: Issues in
12 respect to what?

13 INTERVENOR SARVEY: In pertaining to my
14 written testimony, which I duly filed, which
15 wasn't recognized in the witness list or the
16 hearing schedule.

17 PRESIDING COMMISSIONER PERNELL: What
18 topic is that on?

19 INTERVENOR SARVEY: It's on several
20 topics. I have a copy of it, if you'd like to see
21 it.

22 PRESIDING COMMISSIONER PERNELL: Okay.
23 What I want to do is get into the hearing.

24 INTERVENOR SARVEY: Okay.

25 PRESIDING COMMISSIONER PERNELL: So what

1 we want to do is start now.

2 INTERVENOR SARVEY: Okay.

3 PRESIDING COMMISSIONER PERNELL: I want
4 to begin the hearing --

5 INTERVENOR SARVEY: Because this affects
6 my presentation in that my witnesses weren't
7 allowed but I did file, as Mr. Grattan suggested,
8 on time, but my list was not included in any of
9 the witness listing or anything like that. And I
10 just want to get my say in here somehow.

11 HEARING OFFICER TOMPKIN: Well, why
12 don't we handle it this --

13 PRESIDING COMMISSIONER PERNELL: Well,
14 everybody is going to get their say, so that's not
15 the --

16 INTERVENOR SARVEY: Well, no, but I
17 mean, as far as being part of the evidentiary
18 record. I do have written testimony that I've
19 filed that apparently no one has seen and for some
20 reason, under dockets, there was some
21 miscommunication or something, and I've talked
22 with Ms. Tompkin and I'm aware that she hasn't
23 seen it, I believe --

24 PRESIDING COMMISSIONER PERNELL: When
25 did you file it?

1 INTERVENOR SARVEY: On the 13th, as you
2 required. I have the docket list here and the
3 affidavit that had been served.

4 HEARING OFFICER TOMPKIN: Well, what I'd
5 like to propose is that we go ahead and proceed
6 with the witnesses, and that the first topic area
7 is going to be the project description. I don't
8 know if any of the witnesses or testimony that you
9 wanted to submit related to that area, but if it
10 does, when it's time for the interveners to offer
11 their testimony, then you can bring it up at that
12 time.

13 So, for example, we'll have applicant
14 make their presentation, staff call their
15 witnesses, then the interveners will have an
16 opportunity to present their witnesses, if they
17 file properly. If there is a contention in that
18 particular topic area that you filed properly and
19 you were not recognized, then I will give you an
20 opportunity at that time to make your motion to
21 this committee and to show us evidence that, in
22 fact, you did comply with the requirements and an
23 exception should be made in your case, but we'll
24 do it topic area by topic area.

25 INTERVENOR SARVEY: Okay. Well, I was

1 just trying to make it a little more orderly
2 proceeding and avoid objections and what have you
3 and present it all at once so we don't have to
4 rule on each issue individually --

5 PRESIDING COMMISSIONER PERNELL: I know,
6 but --

7 INTERVENOR SARVEY: -- but whatever way
8 you'd like to do it, I'm more than amiable.

9 PRESIDING COMMISSIONER PERNELL: Thank
10 you.

11 HEARING OFFICER TOMPKIN: Then at this
12 point -- Ms. Sundberg?

13 INTERVENOR SUNDBERG: Yeah. I have
14 something that I want to be read into the
15 record -- I want to read it into the record before
16 we get started -- about the information that I've
17 received. May I do that?

18 HEARING OFFICER TOMPKIN: Well,
19 actually, this is not an appropriate time to do
20 that.

21 INTERVENOR SUNDBERG: So when will I be
22 able to do this, Cheryl?

23 HEARING OFFICER TOMPKIN: Well, you will
24 have an opportunity as an intervener to put in any
25 information that is relevant to proceedings, and

1 we will do that topic area by topic area. If you
2 have something that's extraneous to the particular
3 topic area, I think we will handle that at the
4 conclusion of the proceeding.

5 INTERVENOR SUNDBERG: Then we'll take
6 this at the conclusion?

7 HEARING OFFICER TOMPKIN: We'll deal
8 with that issue at the conclusion of the
9 proceeding.

10 INTERVENOR SUNDBERG: That's fine.

11 HEARING OFFICER TOMPKIN: I'm not
12 guaranteeing you'll get to read it into the
13 record, but we'll address that. Because what we
14 want to do here is to start making our evidentiary
15 record.

16 PRESIDING COMMISSIONER PERNELL: Yes?

17 ASST. BUSINESS MANAGER CORVELLO: The
18 last gentleman that spoke --

19 PRESIDING COMMISSIONER PERNELL: You
20 have to come to the mic and identify yourself.

21 ASST. BUSINESS MANAGER CORVELLO: Yes,
22 sir. My name is Rich Corvello, assistant business
23 manager of the Electricians Union. You can't hear
24 the last gentleman that got up and spoke. This
25 isn't on, and the people at the back of the room

1 couldn't hear.

2 So if that's happening, if you could
3 repeat the question or the comments so that we
4 could hear the dialogue? I just wanted to let you
5 know.

6 PRESIDING COMMISSIONER PERNELL: Okay,
7 thank you.

8 ASST. BUSINESS MANAGER CORVELLO: Thank
9 you, Mr. Pernell.

10 PRESIDING COMMISSIONER PERNELL: Thank
11 you.

12 HEARING OFFICER TOMPKIN: Thank you.

13 PRESIDING COMMISSIONER PERNELL: What
14 we'll do is just ask everyone to speak up. If you
15 can't hear in the back, let us know, and we'll get
16 people closer to the mic.

17 Let's begin.

18 HEARING OFFICER TOMPKIN: So at this
19 point, we will proceed with the evidentiary
20 presentation. We will follow the schedule as
21 shown in the revised topic and witness schedule,
22 and the first substantive area on that schedule is
23 the project description.

24 So at this time I'm going to ask
25 Mr. Grattan to call his first witness.

1 APPLICANT COUNSEL GRATTAN: Yes. The
2 first witness that we'll call is Mr. David Stein,
3 who is seated on my right here, and can we share
4 the microphone?

5 HEARING OFFICER TOMPKIN: I think that
6 would be appropriate.

7 APPLICANT COUNSEL GRATTAN: Okay. Can
8 you give your name, address and current
9 employment.

10 Can you hear me back there?

11 Yes, if you would swear him in, please.
12 Whereupon,

13 DAVID STEIN
14 Was called as a witness herein and, after first
15 being duly sworn, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY APPLICANT COUNSEL GRATTAN:

19 Q Now that you're under oath, as far as
20 your name, would you give us your name, address
21 and current employment.

22 A My name is David Stein. I am currently
23 employed as a project manager for URS Corporation
24 in Oakland, California.

25 Q And have you prepared and previously

1 submitted written testimony in this area?

2 A Yes, I have.

3 Q And that would be the area of the
4 project description?

5 A That is correct.

6 Q And are you sponsoring any exhibits in
7 addition to your testimony here?

8 A Yes, I am. I am sponsoring the
9 application for certification submitted August
10 2001, Section One, Executive Summary; Section Two,
11 Project Description; Section Three, Demand
12 Conformance; Section Four, Facility Closure;
13 Section Five, Project Alternatives; Appendix L,
14 Property Control and Will-Serve Letters. I'm also
15 sponsoring the AFC supplement submitted October
16 2001, the Supplemental Section 3.13, Project
17 Overview; and Comments on the Staff Report
18 submitted by the applicant on January 2002.

19 Q And do you have any corrections or --
20 Excuse me, with respect to your testimony, I can't
21 remember whether I asked you whether you were
22 affirming it under oath --

23 A Yes, I am.

24 Q Okay. And do you have any corrections
25 or modifications to that testimony?

1 A No.

2 Q Could you summarize that testimony,
3 please.

4 A I'd be happy to. The Tracy peaker
5 project is a 169-megawatt nominal simple-cycle
6 project that will be located on a 10.3-acre fenced
7 site in an unincorporated portion of San Joaquin
8 County, southwest of the city of Tracy. The
9 project will be constructed, owned and operated by
10 GWF Energy, LLC. GWF Energy is 50 percent owned
11 by PSEG California Corporation and 50 percent
12 owned by Harbinger GWF, LLC. PSEG California
13 Corporation is owned by PSEG Global USA, Inc., and
14 Harbinger GWF, LLC is owned by Harbert Cogen, Inc.

15 Electricity from the project will be
16 sold under an existing contract to the California
17 Department of Water Resources. Non-contracted
18 electricity may also be sold when power is
19 required to CDWR, which stands for the Department
20 of Water Resources, or the independent system
21 operator, or ISO. The contract requires that that
22 power be delivered no later than October 31, 2002.

23 The primary purpose of the Tracy Peaker
24 project is to produce power in accordance with
25 this contract.

1 The project will use two General
2 Electric model P7121EA or otherwise known as frame
3 7EA combustion turbine generators that will be
4 equipped to burn only natural gas. Each turbine
5 will produce approximately 84.4 megawatts at
6 international standards organization or ISO
7 conditions. Each turbine will be equipped with a
8 dry low-NOx or oxides of nitrogen combustor
9 system, and will utilize evaporative cooling
10 installed on the inlet air at higher ambient
11 temperatures.

12 The project will use a post-combustion
13 selective catalytic reduction for air pollution
14 control. That will reduce oxides of nitrogen to
15 five parts per million at 15 percent O₂, which is
16 recognized as best available control technology
17 for simple-cycle turbines. That system,
18 incidentally, will be made possible by the
19 introduction of ambient air to reduce the turbine
20 exhaust temperature to a lower temperature to
21 permit the SCR system or selective catalytic
22 reduction system to operate properly.

23 In addition, carbon monoxide and VOC or
24 volatile organic compound emissions will be
25 controlled by an oxidation catalyst also at the

1 exhaust of each turbine, to levels of six ppm at
2 15 percent O2 for CO, and two ppm dry at 15
3 percent O2 for VOC or volatile organic compounds.

4 The electricity will flow through the
5 Tesla-Kasson 115-KV transmission line, which
6 actually crosses the 10.3-acre site. And GWF's
7 project will interconnect directly into that line
8 through a substation that is on site.

9 Natural gas will be provided through
10 PG&E's line 401 at a pressure of approximately, a
11 minimum pressure of approximately 500-pounds-per-
12 square-inch gauge. That line also runs directly
13 across the property, and there is no natural gas
14 line associated with the facility other than the
15 minor piping that's required on site to bring the
16 gas into the turbine. The gas will flow to the
17 two combustion turbines through normal gas
18 conditioning equipment and metering equipment.

19 Water for the project will be provided
20 by the Plain View Water District through a 1470-
21 foot pipeline that will provide up to 29.5
22 acrefeet annually to the site from a turnout on
23 the Delta Mendota canal. The project will use a
24 near-zero-liquid waste disposal system. Processed
25 wastewater will be collected on site and

1 periodically transported by licensed haulers for
2 offsite recycling or disposal.

3 Q I have no questions to ask you.

4 APPLICANT COUNSEL GRATTAN: I'd offer
5 the witness for cross examination.

6 HEARING OFFICER TOMPKIN: Does the staff
7 wish to cross examine this witness?

8 STAFF COUNSEL WILLIS: No, we don't.

9 HEARING OFFICER TOMPKIN: Do any of the
10 intervenors wish to cross examine this witness?

11 INTERVENOR HOOPER: This dear lady is my
12 wife. She's deaf and is sitting here so that she
13 can read lips --

14 HEARING OFFICER TOMPKIN: Okay. So
15 Mr. Hooper, you don't have any question?

16 INTERVENOR HOOPER: No.

17 HEARING OFFICER TOMPKIN: Ms. Sundberg?

18 INTERVENOR SUNDBERG: Not at this time.

19 HEARING OFFICER TOMPKIN: Mr. Sarvey?

20 PRESIDING COMMISSIONER PERNELL: You
21 have to come to the mic and identify yourself.

22 CROSS EXAMINATION

23 BY INTERVENOR SARVEY:

24 Q Yeah, I would like to ask a question in
25 terms of why the applicant included flood control

1 in the description. Was that so that at a later
2 date they could process water through that, or how
3 was -- in that pond?

4 A I'm not sure I understand the question,
5 Mr. Sarvey. If you could repeat it or clarify it
6 for me, that would help.

7 UNIDENTIFIED FEMALE SPEAKER: We can't
8 hear.

9 UNIDENTIFIED MALE SPEAKER: Can't hear
10 you back here.

11 UNIDENTIFIED FEMALE SPEAKER: The
12 microphone is not on.

13 BY INTERVENOR SARVEY:

14 Q In the description of the project you
15 provided a flood control pond, and we were
16 concerned whether later on during the project you
17 would be using that pond.

18 A There is an evaporation percolation
19 basin included in the project design. That
20 feature, project feature is designed to contain
21 non-contact or uncontaminated stormwater on site
22 to allow it to evaporate or percolate into the
23 ground, as it would otherwise naturally do.

24 We don't intend to process any
25 stormwater from the project, or discharge it in

1 any other way.

2 PRESIDING COMMISSIONER PERNELL: Any
3 other questions from the intervenors?

4 INTERVENOR PINHEY: Yes. Nick Pinhey
5 with the City of Tracy.

6 PRESIDING COMMISSIONER PERNELL: Yes.

7 CROSS EXAMINATION

8 BY INTERVENOR PINHEY:

9 Q Just a question for clarification. You
10 mentioned that the water serving the facility will
11 be provided via a turnout from the Delta Mendota
12 canal. Is that turnout an existing turnout with
13 Plain View Water District?

14 A Yes, it is.

15 INTERVENOR PINHEY: Thank you.

16 PRESIDING COMMISSIONER PERNELL: Okay.
17 Can you state your qualifications for the record.

18 THE WITNESS: I'd be happy to do that,
19 Commissioner. I hold two bachelor's degrees, one
20 in biological sciences, and another in
21 environmental engineering. I also hold a master's
22 degree in environmental engineering. I am a
23 registered chemical engineer in the State of
24 California.

25 I have approximately 23 years of

1 experience providing consulting advice to
2 government, private industry and other parties on
3 environmental matters, and I have participated in,
4 either as a representative for an applicant or as
5 a representative for Energy Commission staff, on
6 over a dozen siting cases since 1983.

7 PRESIDING COMMISSIONER PERNELL: Thank
8 you.

9 APPLICANT COUNSEL GRATTAN: Would the
10 hearing officer like us to move testimony for --
11 testimony and exhibits into evidence now, or would
12 the hearing officer prefer to wait until the end
13 of all the testimony?

14 HEARING OFFICER TOMPKIN: Either way
15 is -- You can go ahead and move in those portions
16 of the testimony that pertain to this witness.
17 First of all, maybe what we should do is identify
18 the application for certification as an exhibit.

19 HEARING OFFICER TOMPKIN: So at this
20 time what I'd like to do is mark the application
21 for certification as Exhibit One for
22 identification.

23 (Thereupon, the above-referenced
24 document was marked as Staff's Exhibit 1
25 for identification.)

1 HEARING OFFICER TOMPKIN: And so you can
2 tell me which portions you wish to sponsor first.

3 APPLICANT COUNSEL GRATTAN: Yes. That
4 would be -- David, why don't you --

5 THE WITNESS: Yeah. Again, those
6 portions would be, and this is the August 2001
7 original AFC, Section One, Section Two, Section
8 Three, Section Four, Section Five, Appendix L. In
9 addition, there is a separate document that was
10 submitted on October 2001 that was entitled An AFC
11 Supplement. That document, together with the
12 original submittal, was the total material that
13 was accepted as data-adequate by the Commission.

14 In the October 2001 document, I am
15 sponsoring Section 3.13, Project Overview.

16 HEARING OFFICER TOMPKIN: Okay. Well,
17 why don't we mark that AFC Supplement as
18 Exhibit Two for identification.

19 (Thereupon, the above-referenced
20 document was marked as Staff's Exhibit 2
21 for identification.)

22 HEARING OFFICER TOMPKIN: And you
23 indicated that was October 2001?

24 THE WITNESS: October 2001, yes.

25 HEARING OFFICER TOMPKIN: All right.

1 And you're sponsoring Section 3.1 --

2 THE WITNESS: Correct. Yeah, 3.13,
3 entitled Project Overview.

4 In addition, I am sponsoring the
5 comments by GWF on the staff report, the staff
6 assessment. Those were submitted in January 2002.

7 HEARING OFFICER TOMPKIN: Okay. So that
8 is a separate document?

9 THE WITNESS: Correct.

10 HEARING OFFICER TOMPKIN: I will mark
11 the January comments as Exhibit 3, 2002.

12 (Thereupon, the above-referenced
13 document was marked as Staff's Exhibit 3
14 for identification.)

15 HEARING OFFICER TOMPKIN: Can I just
16 stop you for a moment. I had asked Mr. Grattan to
17 put together an exhibit list that would kind of
18 generally identify this for all of the parties.

19 Could you make that available at this
20 time? We'll go off the record briefly.

21 (Thereupon, a recess was held
22 off the record.)

23 HEARING OFFICER TOMPKIN: The applicant
24 has made the exhibit list available to all the
25 parties. I'd also note for the record that staff

1 has provided an exhibit list as has the
2 intervenor, Mr. Tusso. And those lists have also
3 been available, made available to all the parties.

4 INTERVENOR SARVEY: I've supplied one
5 also. I've supplied an exhibit list also.

6 HEARING OFFICER TOMPKIN: Okay. Well,
7 we'll have to check on that at the recess; I don't
8 have that.

9 INTERVENOR SARVEY: Okay. And I'd like
10 to ask a procedural question, please. There seems
11 to be some problem with people hearing in the back
12 in that we don't have enough seating, and we just
13 respectfully request that we resolve that issue
14 before we go forward. We seem to have a small
15 problem with seating in the back, that the venue
16 is not quite large enough.

17 PRESIDING COMMISSIONER PERNELL: I
18 understand that. And we want to continue the
19 hearing, we can't resolve the seating problem. We
20 can ask the manager to bring in more chairs, but
21 we can't change the room or any of that, so --

22 INTERVENOR SARVEY: Okay. Well, I just
23 wanted to remind you that it was a public hearing
24 and that we should provide adequate sound and
25 seating.

1 PRESIDING COMMISSIONER PERNELL: I
2 understand that, Mr. Sarvey.

3 INTERVENOR SARVEY: Okay. Thank you,
4 Mr. Pernell.

5 UNIDENTIFIED FEMALE SPEAKER: We can't
6 hear.

7 UNIDENTIFIED MALE SPEAKER: We can't
8 hear back here.

9 UNIDENTIFIED SPEAKER: We can't hear.

10 HEARING OFFICER TOMPKIN: They can't
11 hear anything.

12 UNIDENTIFIED MALE SPEAKER: Does this
13 microphone work?

14 UNIDENTIFIED FEMALE SPEAKER: For
15 something of this magnitude, I mean, we should
16 have a PA system so that all the people can hear.
17 This is an important issue for a lot of people,
18 all the people in this room.

19 HEARING OFFICER TOMPKIN: Well, we do
20 have an amplification system; unfortunately, it
21 doesn't seem to be working well. It was working
22 earlier.

23 UNIDENTIFIED FEMALE SPEAKER: We can't
24 hear you.

25 HEARING OFFICER TOMPKIN: So what we'll

1 try to do is speak up. I don't know why the
2 amplification system is not working well, but
3 we'll try to contact management and have them work
4 on it.

5 UNIDENTIFIED FEMALE SPEAKER: Thank you.
6 But the other microphone here at the podium is not
7 working at all, at all. We cannot hear anything
8 that anyone that's gone up to the microphone has
9 said.

10 PRESIDING COMMISSIONER PERNELL: All
11 right. Can we go off the record for a minute?

12 (Thereupon, a recess was held
13 off the record.)

14 PRESIDING COMMISSIONER PERNELL: All
15 right. Back on the record.

16 HEARING OFFICER TOMPKIN: So the
17 applicant has sponsored the testimony of
18 Mr. Stein, specifically Sections One, Two, Three,
19 Four, Five, and Appendix L of the August 2001 AFC,
20 as well as Section 3.13 of the AFC supplement and
21 the January 2002 comments. At this time I'm going
22 to ask is there any admission of those sections
23 into evidence from any party?

24 STAFF COUNSEL WILLIS: No, not from us.

25 APPLICANT COUNSEL GRATTAN: No.

1 HEARING OFFICER TOMPKIN: Hearing those
2 objections, those sections will be admitted in
3 evidence.

4 (Thereupon, the above-referenced sections of
5 documents marked as Staff's Exhibits 1-3 for
6 identification, were received into evidence.)

7 HEARING OFFICER TOMPKIN: Do you have
8 any redirect or anything further for this witness,
9 Mr. Grattan?

10 APPLICANT COUNSEL GRATTAN: No.

11 HEARING OFFICER TOMPKIN: All right.

12 (Thereupon, the witness was
13 excused from the stand.)

14 HEARING OFFICER TOMPKIN: I'm going to
15 then ask does the staff wish to present a witness
16 on this issue?

17 STAFF COUNSEL WILLIS: Thank you. Staff
18 at this time would, with the approval of the
19 committee and agreement of the other parties, wish
20 to put our project description into evidence,
21 based on our written declaration.

22 APPLICANT COUNSEL GRATTAN: That is
23 acceptable to the applicant.

24 HEARING OFFICER TOMPKIN: Is that a
25 specific section of your assessment?

1 STAFF COUNSEL WILLIS: Yes. We would
2 need to mark the staff assessment next in order,
3 which would be -- next in order would be
4 Exhibit Four, and the project description is one
5 section of that. So we would mark and enter that
6 into evidence.

7 HEARING OFFICER TOMPKIN: So the staff
8 assessment will be marked as Exhibit Four.

9 (Thereupon, the above-referenced
10 document was marked as Staff's Exhibit 4
11 for identification.)

12 HEARING OFFICER TOMPKIN: And staff is
13 offering the project description from the staff
14 assessment; that is the original staff assessment?

15 STAFF COUNSEL WILLIS: Yes, ma'am.

16 HEARING OFFICER TOMPKIN: They're
17 offering that in evidence at this time. Is there
18 any objection to admission of the project
19 description section of the original staff
20 assessment at this time from any party?

21 Seeing no objection, then the project
22 description will be admitted in evidence.

23 (Thereupon, the above-referenced section of
24 the document marked as Staff's Exhibit 4 for
25 identification was received into evidence.)

1 HEARING OFFICER TOMPKIN: Mr. Sarvey?

2 INTERVENOR SARVEY: Yes, I have 14
3 exhibits which I docketed yesterday and I would
4 like to present them, if possible.

5 HEARING OFFICER TOMPKIN: Do they relate
6 to the project description?

7 INTERVENOR SARVEY: No, they relate to
8 14 different items, so would we do that by topic?
9 Is that how you'd like me to do that?

10 HEARING OFFICER TOMPKIN: Yes. If you
11 have a document that relates to the project
12 description and you want to offer that at this
13 time, then I would entertain that.

14 INTERVENOR SARVEY: Okay. I'm sorry I'm
15 being so paranoid, but I didn't get my written
16 testimony in, and my second preconference hearing
17 didn't appear, so I'm just a little bit nervous
18 about getting my evidence in here.

19 PRESIDING COMMISSIONER PERNELL: Okay.
20 Can you pick those mics up? Then you won't have
21 to --

22 INTERVENOR SARVEY: How about that?

23 PRESIDING COMMISSIONER PERNELL: Well,
24 we're just trying to get into where --

25 HEARING OFFICER TOMPKIN: I'm sorry,

1 Mr. Sarvey, I misunderstood you. I thought you
2 were offering your exhibits at this time, and I
3 misunderstood. Are you offering your exhibit
4 list? Is that what you had in your hand?

5 INTERVENOR SARVEY: Yes.

6 HEARING OFFICER TOMPKIN: I'm sorry, I
7 misunderstood. Of course you can provide that at
8 this time.

9 COMMISSIONER LAURIE: Did you bring more
10 than one copy?

11 STAFF COUNSEL WILLIS: Yeah, we don't
12 have copies.

13 PRESIDING COMMISSIONER PERNELL: We also
14 need copies for the staff, applicant and other
15 intervenors.

16 INTERVENOR SARVEY: Oh, I thought that
17 if it was docketed that everybody had a copy, but
18 I can go get some copies right now for everybody.

19 HEARING OFFICER TOMPKIN: Does any
20 intervenor wish to offer -- Just a moment.

21 No other witnesses are listed for the
22 project description, so at this time, if there's
23 nothing further we'll proceed to the next topic
24 area.

25 APPLICANT COUNSEL GRATTAN: Yes. I

1 believe under Project Description we've been
2 listed as providing a witness in electric supply
3 in the Tracy Peaker project's role and energy
4 supply as well as displacement of other projects.

5 PRESIDING COMMISSIONER PERNELL: Just
6 pull it forward.

7 APPLICANT COUNSEL GRATTAN: I will.

8 PRESIDING COMMISSIONER PERNELL:
9 Together.

10 APPLICANT COUNSEL GRATTAN: Yes, I'll
11 give it to you, okay.

12 HEARING OFFICER TOMPKIN: I'm sorry,
13 would you repeat that. I didn't understand you.

14 APPLICANT COUNSEL GRATTAN: Well, very
15 good. Now I can get it on the record too.

16 I believe under Project Description that
17 the applicant has been listed as presenting
18 testimony with respect to energy supply and the
19 Tracy Peaker project in energy supply as well as
20 to its displacement of other sources of power.

21 HEARING OFFICER TOMPKIN: And is that
22 something you wanted to continue with at this
23 time?

24 APPLICANT COUNSEL GRATTAN: That is
25 correct.

1 HEARING OFFICER TOMPKIN: All right.

2 APPLICANT COUNSEL GRATTAN: We'd like to
3 call Dr. Robert Weisenmuller to the stand.

4 HEARING OFFICER TOMPKIN: I'm going to
5 ask the reporter to administer the oath to the
6 witness.
7 Whereupon,

8 ROBERT WEISENMULLER
9 Was called as a witness herein and, after first
10 being duly sworn, was examined and testified as
11 follows:

12 HEARING OFFICER TOMPKIN: Please
13 proceed.

14 DIRECT EXAMINATION

15 BY APPLICANT COUNSEL GRATTAN:

16 Q Dr. Weisenmuller, could you please give
17 your name, address, and current employment for the
18 record, and please talk into both microphones.

19 A Okay. My name is Robert B.
20 Weisenmuller. I'm a principal at the firm of MRW
21 and Associates. We're located in Oakland,
22 California.

23 Q And you have previously submitted a
24 resume along with your testimony?

25 A That's correct.

1 Q And would you care to briefly state your
2 qualifications.

3 A Briefly, I have two advanced degrees
4 from Berkeley: a Ph.D. in chemistry, and a
5 master's in energy and resources. I served at the
6 California Energy Commission from '77 to '82. I
7 was -- in the last position I was there, I was
8 director of the Office of Policy and Program
9 Evaluation.

10 Since that time, I have been a
11 consultant in one of two firms: one was called
12 Independent Power and the other was MRW and
13 Associates. I have been actively involved in the
14 energy and gas markets in the west now for over 20
15 years.

16 Q Thank you, and you previously prepared
17 and submitted written testimony in this AFC
18 proceeding?

19 A That's correct.

20 Q And what was the area in which you
21 submitted testimony?

22 A The testimony is called electric supply,
23 the Tracy power project's role in energy supply,
24 displacement of energy supply.

25 Q And in addition to this testimony, are

1 you sponsoring any exhibits at this hearing?

2 A Yes, I am. I'm sponsoring a total of
3 five exhibits. The first exhibit is called
4 California Installed Capacity with Heat Rate
5 Greater than 11,890 BTUs per Kilowatt Hour.
6 That's a chart. The second exhibit is the same
7 thing, but it's a table instead of a chart. The
8 third exhibit is 1998 California Peaking and
9 Intermediate Plant NOx Emissions Rates, and that's
10 also a chart. And then the fourth exhibit is the
11 exact same thing as Exhibit Three, but it's a
12 table instead of a chart. And lastly, I will be
13 sponsoring the California State Auditor's Report
14 on California Energy Markets.

15 Q Thank you. Have you any additions or
16 corrections to that testimony?

17 A There is one type or one footnote that
18 may be confusing. On page six, that footnote --
19 In the fourth line, there's a reference there and
20 it says "Cable." Actually that should be
21 "Capable" instead of "Cable."

22 Q Could you briefly summarize your
23 testimony.

24 A Sure. I mean, looking at the impacts of
25 this project on the California energy markets,

1 it's important to realize that what this project
2 does is it adds new capacity, it adds peaking
3 capacity, and it adds that capacity in Northern
4 California. Those three attributes are what's
5 necessary or needed by the state.

6 One of the bases for my statement is you
7 can look at the California State Auditor's report,
8 in terms of looking at what the state needs at
9 this point. What should be the result of having
10 new peaking capacity built in Northern California,
11 that is, an insurance policy for blackouts. It
12 also should help reduce volatility of price
13 spikes, and generally should lead to a better-
14 performing market.

15 This project is very much a peaker. It
16 is designed to be reliable. It is not a base load
17 unit, it is not a combined-cycle. It's a peaker.
18 And as a peaker, for example, it is not an
19 aeroderivative machine, it will have very high
20 reliability. It should be able to get to full
21 load in ten minutes. That is one of the things
22 that the state needs.

23 Q I wonder if you could walk us through
24 the charts that you've attached to your testimony,
25 explain, in fact, what they mean. Specifically,

1 I'd like you to address displacement of other
2 projects.

3 A Sure. Let's look at the first two
4 exhibits. Again, one is a picture and the other
5 is a table. And probably the easiest way to
6 understand the picture is just to start with a
7 table. And what the table shows you is for
8 specific power plants what their heat rate is.
9 The heat rate is a measure of the efficiency of
10 the power plant. It measures how much fuel it
11 takes to develop to generate a kilowatt hour.
12 Generally, a lower heat rate is better than a
13 higher heat rate, because you use less fuel to
14 produce power, so you're doing it more
15 efficiently.

16 And from that list, I've just gone
17 through and said, okay, let's start with all
18 plants that have heat rates higher than -- i.e.,
19 that are less efficient -- than this plant, and
20 look at their capacity. So the first one is the
21 Potrero gas turbine, which is about a 52-megawatt
22 project, and it has a heat rate of slightly over
23 12,000. So when you look at this chart on the
24 previous page, there is -- the first dot is right
25 above 12,000, and it's slightly to the left

1 between the zero and roughly the 100, so that's
2 the point 50.

3 And what this does is it goes through
4 each plant and adds up, so the next plant is an
5 82-megawatt facility. So that means that there
6 are 50 plus 80, about 130 megawatts of plants that
7 are less efficient than this. And it just marches
8 up this list and shows you that in general, there
9 was lots of capacity, close to 1400 megawatts of
10 capacity that is now built and on the system which
11 is less efficient than this unit, which should be
12 displaced by this unit.

13 Now, similarly, what I've done on the
14 next two charts is to look at air emissions. And
15 what I've done there, again, is looking at 1998
16 there is an EPA public database that measures --
17 records for each plant how much power it produced,
18 and how much NOx it emitted. So what I've done,
19 then, is have gone through and looked at the
20 amount of power produced and then at the emissions
21 rate, which is just taking the amount of NOx
22 emitted, dividing that by the amount of power, so
23 that gives you how much NOx is emitted for every
24 amount -- you know, for a standard unit of power,
25 and then again, I add that up and show you that

1 generally there are lot of plants that are much
2 dirtier than this plant is, at least in 1998, and
3 if this plant were operating, it should reduce the
4 emissions of NOx in looking at the system as a
5 whole.

6 Q Now, I'd like to hand you a list of
7 projects, and this list of projects comes from an
8 exhibit attached to Mr. Sarvey's testimony. And
9 I'll hand this list out so Mr. Sarvey and the rest
10 of you can see the list and where it's from, and
11 I'd --

12 HEARING OFFICER TOMPKIN: Is this
13 perhaps something that we should mark as an
14 exhibit if you're going to refer to it?

15 APPLICANT COUNSEL GRATTAN: Sure, we
16 can -- I don't want to sponsor -- This has been
17 docketed for the record by Mr. Sarvey.

18 HEARING OFFICER TOMPKIN: Okay. So this
19 is just for purposes of explanation?

20 APPLICANT COUNSEL GRATTAN: Correct.

21 HEARING OFFICER TOMPKIN: All right.

22 INTERVENOR SARVEY: I'd like to point
23 out that that's part of the written evidence that
24 I tried to introduce earlier that you asked me to
25 comment when that written evidence applied to what

1 we were doing, and this is part of my written
2 evidence that was never entered into the record.

3 HEARING OFFICER TOMPKIN: Well, let me
4 note that for the record, and you can -- when we
5 come to you, you can talk about it more
6 extensively.

7 APPLICANT COUNSEL GRATTAN: Yeah. I had
8 presumed it was entered into the record,
9 Mr. Sarvey, so --

10 INTERVENOR SARVEY: It was docketed.

11 PRESIDING COMMISSIONER PERNELL: Okay,
12 please continue.

13 APPLICANT COUNSEL GRATTAN: Okay.

14 BY APPLICANT COUNSEL GRATTAN:

15 Q The comments at the bottom of this
16 submission indicate that there are a variety --
17 that the data there shows that there is a variety
18 of projects in the Bay Area which, in fact, emit
19 less nitrogen oxides than does the Tracy Peaker
20 project.

21 Now, based upon your review of the
22 status of these projects at the Energy Commission,
23 could you walk us through those projects and
24 comment on their status.

25 A Sure. I looked at the list this

1 afternoon and looked at, on the Energy Commission
2 web site, there are a variety of lists of projects
3 that are now pending before the Energy Commission
4 or that have been withdrawn from the Energy
5 Commission. And I've tried to identify which of
6 these were now pending before the Energy
7 Commission at this time.

8 And the answer is I don't think any of
9 them are, although, again, some projects may have
10 different names or titles. For example, the first
11 one by Electricity Providers is an Antelope Valley
12 project of 140 megawatts. There was a similar
13 project in Lancaster that was 240 megawatts that
14 was withdrawn on 7/24 of 2001. There was
15 another -- The second project is a Bay Area
16 project that looks -- at least there was a
17 similar-sized project in Concord which was called
18 Evergreen, which was also withdrawn.

19 The Marant project, and I don't believe
20 that has ever gone in for siting at the Energy
21 Commission -- I believe Marant has put many of its
22 projects on hold at this point -- there is a
23 project in the Bay Area at San Francisco. Again,
24 this is one -- there was a project by El Paso
25 there which was permitted but at this point has

1 been suspended.

2 There is a -- The sixth project is the
3 Spartan project in San Jose, which I believe was
4 also suspended on December 19th of 2001. So I'm
5 not aware that any of these are now pending before
6 the Energy Commission, and generally, as I've
7 indicated, I believe they have been suspended or
8 withdrawn, the ones that were.

9 Q And I have a final question, one which I
10 forgot to ask earlier, and that is do you affirm
11 your previous testimony under oath?

12 A Yes, I do.

13 APPLICANT COUNSEL GRATTAN: That's all I
14 have. The witness is available for cross
15 examination.

16 HEARING OFFICER TOMPKIN: Okay. Thank
17 you, Mr. Grattan.

18 Did staff wish to cross examine this
19 witness?

20 STAFF COUNSEL WILLIS: Not at this time,
21 thank you.

22 HEARING OFFICER TOMPKIN: Then we'll
23 have, give the intervenors an opportunity for
24 questioning, and we'll begin with -- Mr. Sarvey,
25 did you have questions?

1 INTERVENOR SARVEY: Yeah, I had a couple
2 of questions.

3 PRESIDING COMMISSIONER PERNELL: You've
4 got to get -- Mr. Sarvey, hold the mic up to
5 your --

6 INTERVENOR SARVEY: It's taped to the
7 thing here.

8 PRESIDING COMMISSIONER PERNELL: Well,
9 untape it.

10 INTERVENOR SARVEY: Do we have a
11 portable mic that we can use?

12 PRESIDING COMMISSIONER PERNELL: No.
13 You've got to untape the mic, hold it right to
14 your mouth, please.

15 CROSS EXAMINATION

16 BY INTERVENOR SARVEY:

17 Q Were you aware that the Calpine-Gilroy
18 plant was approved at 2.5 parts per NOx?

19 A I've not reviewed that one.

20 INTERVENOR SARVEY: Okay, thank you.
21 And to put this exhibit into some sort of context,
22 this was part of an Energy Commission memorandum
23 where they had a meeting discussing problems with
24 the --

25 PRESIDING COMMISSIONER PERNELL: Do you

1 have a question for the --

2 INTERVENOR SARVEY: Well, I was just
3 trying to clarify where this came from, because
4 it's due my testimony that you said if there was
5 something concerning my testimony I could enter
6 it. Should I just ask questions, Mr. Pernell?

7 PRESIDING COMMISSIONER PERNELL: If you
8 have questions for the applicant witness --

9 INTERVENOR SARVEY: Yes, I do.

10 BY INTERVENOR SARVEY:

11 Q Are you aware or do you have any
12 knowledge of the governor's request to the Federal
13 Energy Regulatory Commission to cancel the DWR
14 long-term energy contract for this project?

15 PRESIDING COMMISSIONER PERNELL:
16 Mr. Sarvey, it has to be on the subject matter
17 that we're talking about, which is project
18 description. That's the subject matter that's
19 before the committee right now.

20 APPLICANT COUNSEL GRATTAN: Commissioner
21 Pernell, we're willing to answer that question.
22 We believe it's relevant, given the testimony of
23 Dr. Weisenmuller. We'll answer it.

24 PRESIDING COMMISSIONER PERNELL: Okay.

25 THE WITNESS: I am aware that the Public

1 Utilities Commission and the Oversight Board,
2 Electricity Oversight Board filed a Section 206
3 complaint with the FERC that refers to all
4 projects with DWR contracts, that still hold such
5 contracts, one of which is the GWF project.

6 BY INTERVENOR SARVEY:

7 Q Are you aware of any projects to date
8 that have been displaced or shut down as a result
9 of the CEC approval of a power plant such as this
10 GWF plant?

11 A Oh, sure. I mean, in terms of
12 displacement, the way the electric system
13 operates, the Energy Commission has permitted
14 projects for the last 20 years, and as those
15 projects came on line, typically they would
16 displace the operation of older, less efficient
17 units. I've testified in a number of those cases
18 on that topic, things like the Arco Watson
19 refinery, or the Richmond Chevron project, or the
20 Cal Energies Coso project, Westinghouse's project
21 down at Mojave. All those projects -- Crockett
22 Cogen -- All those projects were approved by the
23 Energy Commission as part of the application.

24 There was testimony on the effects of
25 those projects displacing the operation of other

1 plants, particularly in the near area.

2 Q Would you consider the Tracy Biomass
3 plant in this category?

4 A The Tracy Biomass project is not a --
5 This one is a peaker project. It would displace
6 essentially peaker units or intermediate units,
7 and thus, the emissions of those types of plants.

8 INTERVENOR SARVEY: May I enter part of
9 my written testimony now, is does that wait until
10 later also?

11 HEARING OFFICER TOMPKIN: Well, you
12 can -- If there's something you want to offer, you
13 can offer it at this time if it's related to this
14 topic.

15 INTERVENOR SARVEY: Thank you. That's
16 okay, I'll hold off. Thank you.

17 HEARING OFFICER TOMPKIN: All right.

18 APPLICANT COUNSEL GRATTAN: Okay.

19 HEARING OFFICER TOMPKIN: Any other
20 questions by intervenors for this witness?

21 INTERVENOR HOOPER: Yeah, I have one.

22 HEARING OFFICER TOMPKIN: All right.

23 INTERVENOR HOOPER: Do you anticipate --

24 PRESIDING COMMISSIONER PERNELL: You
25 have to state your name for the record.

1 INTERVENOR HOOPER: Oh, my name is Jim
2 Hooper.

3 CROSS EXAMINATION

4 BY INTERVENOR HOOPER:

5 Q Do you anticipate this plant being a
6 peaker plant throughout its history?

7 A Again, it's designed as a peaker. My
8 understanding is GWF had offered to DWR an option
9 to convert it to combined cycle, and DWR did not
10 accept that option.

11 Q Yeah.

12 A And what's being permitted out is a
13 peaking unit, and again, it's designed so that it
14 can come on line in ten minutes.

15 Q Right.

16 A It's designed as a peaker.

17 Q That's the reason for the single-cycle?

18 A Right.

19 Q Yeah.

20 A That and the selection of the turbine,
21 again, is designed to make it a highly reliable
22 unit.

23 Q And the single-cycle is, has greater
24 emissions than a dual cycle?

25 A Well, they're different plants. Again,

1 a combined-cycle generally, if it were a base load
2 unit, it would have a better heat rate; i.e., it
3 would be more efficient.

4 Q Yeah.

5 A And it would tend to operate more, say
6 on a -- not necessarily a 24-hour-a-day, seven-
7 day-a-week basis, but maybe 16 hours a day, 16 to
8 24 hours a day at least five days a week. So it's
9 sort of a base load.

10 But with a peaking unit, you have it
11 operating so that if, say, Diablo Canyon trips
12 off, you can't increase the operation of that
13 plant, while a peaker you can bring up to full
14 load in ten minutes. So you can replace a unit
15 that's tripped off.

16 So the purpose of this unit is to
17 provide peaking power. Now, again, it could be
18 changed, but that would require presumably some
19 sort of modification back to the CEC.

20 Q In the documents it seemed that the
21 plant was going to run, what, 8,000 hours a year?

22 A What I've said here is looking at 1999,
23 if the plant had operated then, so this is before
24 the crisis in the power market, given its heat
25 rate it would have operated about 2,000 hours, in

1 terms of sales to the PX.

2 I also indicated that it could, in
3 addition, it would sell ancillary services to the
4 ISO. And that would add roughly about another
5 1,000 hours. So in 1999, if it were operating
6 then, it would have operated about 3,000 hours.

7 Q But currently it's scheduled for 8,000
8 hours?

9 A I don't know if it's scheduled. I mean,
10 the scheduling of it will, depending upon what the
11 market, how much DWR operates and what the market
12 looks like, I believe it's asked -- and it's
13 currently able to operate up to eight. But in
14 terms of -- That's not a guarantee.

15 Q My concern is whether it actually
16 behaves as a traditional peaker.

17 A Well, again, that's what it's here for.
18 Certainly, DWR has the ability to operate it 4,000
19 hours.

20 Q Yeah.

21 A So they have the ability to operate it
22 that much. And, in addition, you get into market
23 conditions. But again, when I looked at the
24 market, what the efficiency of the system was in
25 1999, it certainly would not have operated more

1 than that, more than the 4,000.

2 Q Yeah, the world is a lot different place
3 now.

4 A Well, what will affect the level of
5 operation in a given year is, one, what the hydro
6 conditions look like. A lot of Northern
7 California's power comes from hydro. If it is --
8 Last year was a one-in-75 dry year in the west.
9 If we have that again next year, it will operate
10 more than if we have, say, a one-in-75 wet year,
11 or even an average year.

12 In addition, for this type of unit along
13 with hydro, the other question is what the weather
14 looks like. If we have, again, a very unusual
15 summer with very high temperatures for much of the
16 summer, which we did not have last year, then this
17 will operate more in that sort of unusual summer
18 than if we have, say, a mild summer.

19 And then finally, if you look at some of
20 the major power plants, say, Diablo Canyon, if
21 Diablo Canyon has a major outage or has a
22 refueling period, then this will tend to operate
23 more in that situation than if Diablo is operating
24 as usual or above usual. So, again, this will
25 react very much to the market conditions, some of

1 which the weather we can't change or predict, and
2 the other, in terms of power plants, for better or
3 worse, they do tend to have problems from time to
4 time, some of the larger ones. And often that's
5 at the time you least would like to see it occur.

6 So, again, this is an insurance policy,
7 although typically peakers do not operate that
8 many hours.

9 Q Yeah. I guess my ultimate concern is
10 that if it's a traditional power plant being
11 presented to us as a peaker with a dirtier engine
12 or turbine than it needs to be, then we may be
13 misled here.

14 A Yeah, but part of the evidence I've
15 given you is at least that relative to right
16 now -- I mean, there have not been very many
17 peaking plants built in California in the last
18 ten, fifteen years.

19 Q Right.

20 A And what that means is the older power
21 plants are the ones that basically are running
22 less and less. And, you know, what they are doing
23 essentially is acting as peakers.

24 Now, a lot of those units, if you look
25 at them, don't come up in ten minutes. A lot of

1 them come up more in seven or ten hours, and their
2 emissions -- again, looking at my chart, their
3 emissions for many of those plants are dirtier
4 than the emissions from this plant.

5 Q Yeah, and this plant still could be
6 cleaner, with a dual-cycle or what you call the
7 multi-cycle.

8 APPLICANT COUNSEL GRATTAN: Can I
9 request that you not make a speech here and ask
10 questions?

11 INTERVENOR HOOPER: Sure.

12 HEARING OFFICER TOMPKIN: I'll take that
13 as an objection and I'll sustain it. So we're
14 asking questions of this witness.

15 INTERVENOR HOOPER: Yeah, I'm here to
16 ask questions.

17 HEARING OFFICER TOMPKIN: Okay. What's
18 your next question?

19 INTERVENOR HOOPER: This could be
20 presented as a dual-cycle, combined-cycle?

21 PRESIDING COMMISSIONER PERNELL: If the
22 project changes, it would have to come back to the
23 Commission.

24 INTERVENOR HOOPER: And go back through
25 the --

1 PRESIDING COMMISSIONER PERNELL: And go
2 back through this process. So what you see on
3 the, for project description is what has to be
4 there.

5 INTERVENOR HOOPER: So --

6 PRESIDING COMMISSIONER PERNELL: If it
7 changes, if it wants to go into a larger plant or
8 any alterations, that would have to come back to
9 the Commission.

10 INTERVENOR HOOPER: So if it's not
11 appropriate as a single-cycle but it would be more
12 appropriate as a multi-cycle, then that would be
13 one of the objections to the construction of this
14 plant?

15 APPLICANT COUNSEL GRATTAN: Is that a
16 question of the witness?

17 PRESIDING COMMISSIONER PERNELL: No,
18 that's -- I'm assuming it's a question to the
19 chair.

20 INTERVENOR HOOPER: Well, that's what --
21 Yeah.

22 PRESIDING COMMISSIONER PERNELL: What
23 I'm saying is, right now it's a peaker plant.

24 INTERVENOR HOOPER: Right.

25 PRESIDING COMMISSIONER PERNELL: If they

1 want to change it to anything else, it has to come
2 back to the Commission and go through a process, a
3 public process like this so they can't change that
4 and you not know that.

5 INTERVENOR HOOPER: Yeah. And if it's
6 not appropriate as a single-cycle, I guess that's
7 one of the reasons for us being here.

8 COMMISSIONER LAURIE: Commissioner
9 Pernell, if I may --

10 I understand your question to be a
11 discussion of the differential between a single-
12 cycle and a combined-cycle --

13 INTERVENOR HOOPER: Combined-cycle.

14 COMMISSIONER LAURIE: -- and you are
15 asking, regarding the project description, why
16 this project is not a combined-cycle; is that your
17 question?

18 INTERVENOR HOOPER: Thank you,
19 Mr. Laurie.

20 COMMISSIONER LAURIE: That's the
21 question.

22 THE WITNESS: Okay. Again, when you
23 look at what Northern California needs, looking at
24 the Auditor General's report, looking at what's
25 been built, Northern California needs a peaking

1 plant, needs more peakers. You know, the
2 combined-cycles are great plants, but you cannot
3 run a utility system that's just combined-cycles.
4 You need some peakers in that mix. And what this
5 plant does is deal with that need.

6 And, again, what this does, as opposed
7 to what a combined-cycle does, is it's designed to
8 really deal with those sort of upset conditions to
9 provide that insurance policy when things trip
10 off, and combined-cycles don't do that.

11 INTERVENOR HOOPER: Yeah, I got that
12 idea, just it strikes me that this might be a
13 regular plant in peaker clothing.

14 Anyway, I'm done. Thank you.

15 PRESIDING COMMISSIONER PERNELL: Thank
16 you.

17 HEARING OFFICER TOMPKIN: Mr. Pinhey?

18 INTERVENOR PINHEY: Thank you. Nicholas
19 Pinhey, City of Tracy. Just a quick question for
20 the witness.

21 CROSS EXAMINATION

22 BY INTERVENOR PINHEY:

23 Q Is the objective of your testimony
24 pertaining to the exhibit to present the status of
25 these facilities, as opposed to the issue of the

1 NOx limits being half what it would be for the
2 Tracy peaker facility?

3 A I've been asked specifically to get to
4 the status, and I think part of what I'm trying to
5 say is, you know, for 20 years I've been watching
6 power plants being proposed. It's very easy to
7 propose a power plant. It's a lot more difficult
8 to get it permitted, financed and constructed.

9 So that when you look at a list like
10 this, you know, the real issue comes back to
11 what's been permitted, what's been constructed.
12 And, you know, how much do you use that as an
13 example, as opposed to, you know, I mean, frankly,
14 there are thousands of megawatts of projects
15 proposed which are basically press releases that,
16 you know, really, you shouldn't give much
17 evidentiary weight to those.

18 INTERVENOR PINHEY: Okay. Thank you for
19 the clarification.

20 PRESIDING COMMISSIONER PERNELL: Thank
21 you.

22 INTERVENOR SUNDBERG: Irene Sundberg.

23 CROSS EXAMINATION

24 BY INTERVENOR SUNDBERG:

25 Q Doctor, can you tell me what the maximum

1 price for power per megawatt hour under the DWR
2 contract for this project is?

3 A I'd have to check on that. I mean, it's
4 a peaking project, so it's got a peaking project's
5 price structure.

6 Q Thank you. What's the current price for
7 power per megawatt on a stock market today
8 approximately is okay with me.

9 APPLICANT COUNSEL GRATTAN: I'm going to
10 object, finally, here to this line of questioning.
11 This has nothing to do with the project's
12 efficiency, reliability, or with the environmental
13 impact to the project.

14 HEARING OFFICER TOMPKIN: And I'll
15 sustain that objection.

16 INTERVENOR SUNDBERG: Fine.

17 PRESIDING COMMISSIONER PERNELL: Thank
18 you.

19 Any other questions from the intervenors
20 on the project description? Hearing none --

21 HEARING OFFICER TOMPKIN: All right.
22 Then why don't we move on to the next topic area.

23 APPLICANT COUNSEL GRATTAN: Should we
24 mark the witness's testimony and exhibits?

25 HEARING OFFICER TOMPKIN: That sounds

1 like a good idea.

2 APPLICANT COUNSEL GRATTAN: You can read
3 them all.

4 HEARING OFFICER TOMPKIN: I'm looking at
5 the exhibit list that you provided. If I'm
6 reading it correctly, the documents that are being
7 offered with respect to this witness are numbered
8 32, 33, 34, and 35 on the applicant's witness
9 list?

10 APPLICANT COUNSEL GRATTAN: That's
11 correct.

12 HEARING OFFICER TOMPKIN: Why don't we
13 renumber that, for purposes of the record. We'll
14 renumber the California Install Capacity with Heat
15 Rate document as Exhibit Five for identification,
16 and that's the diagram.

17 (Thereupon, the above-referenced
18 document was marked as Staff's Exhibit 5
19 for identification.)

20 HEARING OFFICER TOMPKIN: We'll renumber
21 the California Install Capacity with Heat Rate
22 table as Exhibit Number Six.

23 (Thereupon, the above-referenced
24 document was marked as Staff's Exhibit 6
25 for identification.)

1 HEARING OFFICER TOMPKIN: We'll renumber
2 the 1998 California Peaking and Intermediate Plant
3 NOx Emission Rates diagram as Exhibit Seven.

4 (Thereupon, the above-referenced
5 document was marked as Staff's Exhibit 7
6 for identification.)

7 HEARING OFFICER TOMPKIN: And we'll
8 number the 1998 California Peaking and
9 Intermediate Plant NOx Emission Rates table --
10 Okay, the 1998 California Peaking and Intermediate
11 Plant NOx Emission Rates table will be numbered
12 Exhibit Eight for identification.

13 (Thereupon, the above-referenced
14 document was marked as Staff's Exhibit 8
15 for identification.)

16 HEARING OFFICER TOMPKIN: Those
17 documents are being offered in evidence at this
18 time. Does any party have an objection to
19 admission of any exhibit, Five, Six, Seven or
20 Eight?

21 Seeing no objection, Exhibits Five, Six,
22 Seven, and Eight will be admitted in evidence.

23 (Thereupon, the above-referenced documents,
24 marked as Staff's Exhibits 5-8 for
25 identification, were received into evidence.)

1 APPLICANT COUNSEL GRATTAN: Madam
2 Hearing Officer, the witness also offered to
3 sponsor the Auditor General's report, which is
4 part of the public domain.

5 HEARING OFFICER TOMPKIN: That's not
6 indicated anywhere on the list. Is that a
7 separate supplementary document?

8 APPLICANT COUNSEL GRATTAN: That's
9 correct; it was cited in his report and I don't
10 think we have strong feelings whether it's entered
11 into the record, but if anyone --

12 INTERVENOR SUNDBERG: I object to that.

13 APPLICANT COUNSEL GRATTAN: Fine. Fine,
14 withdrawn.

15 HEARING OFFICER TOMPKIN: So you
16 withdraw that? All right.

17 Thank you, Mr. Weisenmuller.

18 (Thereupon, the witness was
19 excused from the stand.)

20 HEARING OFFICER TOMPKIN: Then at this
21 time we'll move on, then, to the next topic area
22 and that would be Facility Design. The applicant
23 can call its witness.

24 APPLICANT COUNSEL GRATTAN: Yes. We'd
25 like to call Mr. Hal Moore to the stand.

1 HEARING OFFICER TOMPKIN: I'd ask the
2 reporter to swear him in at this time.

3 Whereupon,

4 HAL MOORE

5 Was called as a witness herein and, after first
6 being duly sworn, was examined and testified as
7 follows:

8 HEARING OFFICER TOMPKIN: Please
9 proceed.

10 DIRECT EXAMINATION

11 BY APPLICANT COUNSEL GRATTAN:

12 Q Could you give us your name, address and
13 current employment.

14 A My name is Hal Moore, 4300 Railroad
15 Avenue in Pittsburg, California. And my current
16 occupation is the engineering and maintenance
17 manager for GWF Power Systems.

18 Q And could you briefly -- You're here to
19 testify today with regard to what subjects?

20 A Facility design, power plant efficiency
21 and reliability.

22 Q Within facility design I'm speaking,
23 what exactly are you covering?

24 A In facility design, I prepared the
25 facility design including transmission engineering

1 and design, transmission safety and nuisance,
2 natural gas supply, facility closure and general
3 conditions testimony as part of the applicant's
4 testimony package.

5 HEARING OFFICER TOMPKIN: Mr. Grattan,
6 if I might interrupt. I note in looking at the
7 schedule that Mr. Moore is indicated as a witness
8 in three areas. Those are facility design, power
9 plant efficiency, and power plant reliability.
10 Would you like to -- They all follow one another
11 in sequence; would you like to handle those all at
12 once?

13 APPLICANT COUNSEL GRATTAN: We
14 appreciate the courtesy and we'll do that.

15 HEARING OFFICER TOMPKIN: All right.
16 You may proceed.

17 APPLICANT COUNSEL GRATTAN: But we'll
18 start -- Well, we'd like to handle them at one
19 sitting, but seriatim, one after another.

20 HEARING OFFICER TOMPKIN: Okay.

21 APPLICANT COUNSEL GRATTAN: So it's
22 confusing enough around here.

23 HEARING OFFICER TOMPKIN: Okay.

24 BY APPLICANT COUNSEL GRATTAN:

25 Q So have you previously -- I think you

1 were heading that way. Have you previously
2 submitted written testimony in this proceeding?

3 A Yes. As I said, I prepared facility
4 design, transmission engineering design,
5 transmission safety and nuisance, natural gas
6 supply, facility closure, and general conditions
7 testimony as part of GWF's testimony package.

8 Q And could you briefly tell us your role
9 in the project and your qualifications.

10 A My role in the project is the
11 engineering manager for GWF. The aforementioned
12 sections were prepared under my direction and
13 supervision. My qualifications, I have a bachelor
14 of science degree in mechanical engineering, and I
15 have 17 years experience in designing,
16 constructing, operating and maintaining gas
17 turbine and solid fuel power plants.

18 Q And are you sponsoring any exhibits?

19 A Yes, I am. In the AFC supplement dated
20 October 2001, Section 3.4, Facility Design;
21 Section 3.13, Project Overview; Section 5, Project
22 Alternatives -- or excuse me, strike that last
23 one, 3.4 and 3.3 from October 2001. From the
24 original AFC application which is dated August
25 2001, Section 5, Project Alternatives; Section 6,

1 Transmission; Section 7, Natural Gas Supply; and
2 Appendix A, which was the applicant's initial
3 impact, system impact study on the interconnect.

4 Additionally, Revision 1 to that impact
5 study, which is dated November 2001; Appendices
6 A-1 through A-3 on Electric Transmission dated
7 October 2001; Data Response 38 on Transmission
8 dated November 2001; Appendix J to the original
9 application which is Engineering Design Criteria;
10 and then the Wet Weather Construction Contingency
11 Plan, which is dated December 2001.

12 Q And can you affirm your previously
13 submitted testimony under oath today?

14 A Yes, I can. Yes, I do.

15 Q And do you have any additions,
16 modifications or corrections to that testimony?

17 A One very minor one. Figure one in
18 Appendix A, which shows our site in the
19 interconnect, that there are three transmission
20 lines which cross the proposed project site, and
21 the line we're tying into is the Tesla-Kasson line
22 on that figure. It was indicated as being the
23 center of the three lines. It is actually the
24 line closest to our facility.

25 Q Could you briefly summarize your

1 testimony.

2 A Yes, I can, thank you. The Tracy peaker
3 project, the design of it will consist of two
4 General Electric 70-A industrial gas turbines
5 operating in simple-cycle. Each turbine will be
6 provided with a dry low-NOx combustor and a
7 selective catalytic reduction system, or SCR, to
8 allow the project to meet BACT.

9 The project consists of an on-site
10 electrical and natural gas interconnect, and the
11 project has a short, 1470-foot pipeline from the
12 Delta Mendota canal for the water supply. Based
13 on my analysis and supervision of the above-
14 referenced sections and documents, it is my
15 opinion that the project will not adversely affect
16 the electrical system, and that there is an
17 adequate supply of water and natural gas for the
18 project.

19 The Tracy peaker project will be
20 engineered, designed and constructed in accordance
21 with all applicable laws, ordinances, regulations
22 and standards or lowers, and based on the above,
23 it is my opinion that the Tracy peaker project
24 being constructed in this fashion can be safely
25 and reliably operated and will not impact public

1 health and safety.

2 Q Do you have any comments to add with
3 respect to -- Well, let me ask it another way.
4 Have you read the staff assessment?

5 A Yes, I have.

6 Q Including its general conditions?

7 A Yes, I have.

8 Q And closure conditions?

9 A Yes, I have.

10 Q And do you agree with the staff
11 assessment?

12 A Yes, I do.

13 Q And will GWF comply with both the
14 general conditions and the closure conditions?

15 A Yes, we will.

16 Q Now, I have a question with respect to
17 the, just a clarifying question with respect to --

18 PRESIDING COMMISSIONER PERNELL: Get a
19 little closer, Mr. Brattan.

20 BY APPLICANT COUNSEL GRATTAN:

21 Q -- with respect to the 115 transmission
22 line with which the project is interconnecting and
23 its ability to supply the local distribution grid.
24 Have you any knowledge or opinion on that?

25 A The project is tying into the Tesla-

1 Kasson line, which runs between the existing PG&E
2 Tesla substation and the Kasson substation. We
3 are tying in at a point between taps that feed the
4 Safeway distribution system and the Owens,
5 Illinois bottle factory. Looking at the load flow
6 diagrams which are part of the interconnect study,
7 the power from our plant will exit the Tracy
8 peaker project and flow in both directions, back
9 towards Tesla and towards Kasson.

10 And so, as there are facilities
11 aforementioned, Safeway and Owens, and there is
12 also a distribution substation which feeds the
13 City of Tracy that are the three or four nearest
14 taps where we tie in, it makes sense that our
15 power will flow to those facilities.

16 Q Thank you very much.

17 APPLICANT COUNSEL GRATTAN: I have no
18 further direct and the witness is available for
19 cross examination.

20 HEARING OFFICER TOMPKIN: All right.
21 Does the staff wish to cross examine this witness?

22 STAFF COUNSEL WILLIS: No, we do not.

23 HEARING OFFICER TOMPKIN: All right.
24 Then we'll give the intervenors an opportunity to
25 ask questions of this witness.

1 All right, Mr. Hooper?

2 CROSS EXAMINATION

3 BY INTERVENOR HOOPER:

4 Q Mr. Moore, did you testify that this
5 plant will have no significant impact on public
6 health and safety?

7 A In the regards of the way it's designed;
8 in other words, the plant is safe to operate from
9 a design standard, as far as the piping and
10 structural and items like that.

11 Q Yeah. I'm concerned, are you an expert
12 witness in public health and safety?

13 APPLICANT COUNSEL GRATTAN: We'll
14 stipulate that Mr. Moore is not an expert in
15 public health and safety. There will be an
16 opportunity to get into that when health, safety
17 and air quality are presented.

18 INTERVENOR HOOPER: Well, he presented
19 his comment on public health and safety.

20 THE WITNESS: As a clarification, the
21 intent of my statement was that this is a facility
22 that is designed for the applicable codes --

23 INTERVENOR HOOPER: Right.

24 THE WITNESS: -- which makes it safe for
25 the surrounding people and the workers in the

1 plant.

2 BY INTERVENOR HOOPER:

3 Q So your testimony doesn't have anything
4 to do with the effluence of the plant?

5 A No, that would be covered by the air
6 quality experts that we have.

7 INTERVENOR HOOPER: Okay, thank you.

8 PRESIDING COMMISSIONER PERNELL: Thank
9 you.

10 HEARING OFFICER TOMPKIN: Any other
11 questions by intervenors?

12 Seeing none, Mr. Grattan, do you have
13 any redirect?

14 APPLICANT COUNSEL GRATTAN: No.

15 HEARING OFFICER TOMPKIN: All right.

16 APPLICANT COUNSEL GRATTAN: And I would
17 move Mr. Moore's exhibits be identified, and if
18 you could recite off the list what you're
19 sponsoring.

20 HEARING OFFICER TOMPKIN: Now, is this
21 the same list that's in his prepared testimony --

22 APPLICANT COUNSEL GRATTAN: That's
23 correct.

24 HEARING OFFICER TOMPKIN: -- because I
25 got a little bit lost when he was going through --

1 APPLICANT COUNSEL GRATTAN: That is
2 correct.

3 HEARING OFFICER TOMPKIN: All right.
4 And what I would need you to do is indicate which
5 portions are sections of other documents and which
6 are separate documents.

7 APPLICANT COUNSEL GRATTAN: Okay.
8 Facility design is included in Applicant's
9 Exhibit Three, which is the AFC with supplement,
10 and that's Section 3.4, as is Section 3.13 -- That
11 is included in Exhibit Three.

12 HEARING OFFICER TOMPKIN: Okay. Now,
13 let's back up here, because this is going to be
14 confusing.

15 APPLICANT COUNSEL GRATTAN: Yeah, I
16 agree.

17 HEARING OFFICER TOMPKIN: Are you
18 referring to applicant's exhibit or the exhibit
19 list that we've marked?

20 APPLICANT COUNSEL GRATTAN: I'm
21 referring to your exhibit list and I'm sorry. We
22 are referring to the supplement which, in fact, is
23 your Exhibit Two.

24 HEARING OFFICER TOMPKIN: Okay.

25 APPLICANT COUNSEL GRATTAN: And I would

1 for the record indicate that both Section 3.4,
2 Facility Design, and 3.13 are part of Exhibit Two.

3 Section 5.0, Project Alternatives, that
4 is your Exhibit One, the original application.
5 Section 6.0, Transmission, that is your
6 Exhibit One, the original application. Section
7 7.0 is also from Exhibit One, the original
8 application.

9 Separate from that revision one, the --
10 I'm sorry, excuse me, Appendix A, the applicant's
11 initial system impact study --

12 HEARING OFFICER TOMPKIN: Is that a
13 separate document?

14 APPLICANT COUNSEL GRATTAN: -- that's a
15 separate document and that's Number 31 on our
16 exhibit list.

17 HEARING OFFICER TOMPKIN: All right. So
18 why don't we mark Appendix A as Exhibit Nine on
19 the committee's exhibit list.

20 (Thereupon, the above-referenced
21 document was marked as Staff's Exhibit 9
22 for identification.)

23 APPLICANT COUNSEL GRATTAN: And revision
24 one to the applicant's system impact study,
25 November 2001, that is Number 32 on the

1 applicant's list.

2 HEARING OFFICER TOMPKIN: So that was
3 previously marked as Exhibit Five, and are you
4 sponsoring a section within that?

5 THE WITNESS: No.

6 APPLICANT COUNSEL GRATTAN: No, that
7 wasn't -- No, not -- It wasn't previously marked
8 as Appendix Five, at least according --

9 HEARING OFFICER TOMPKIN: Okay.

10 APPLICANT COUNSEL GRATTAN: Excuse me,
11 Number Five on your list is Number 33 on our list.

12 HEARING OFFICER TOMPKIN: Okay.

13 APPLICANT COUNSEL GRATTAN: Revision one
14 is new, which would be Number Ten. We're going
15 consecutively on your list. So our Number 32
16 should be your Number Ten.

17 HEARING OFFICER TOMPKIN: Can we go off
18 the record a moment?

19 APPLICANT COUNSEL GRATTAN: Yes.

20 (Thereupon, a recess was held
21 off the record.)

22 HEARING OFFICER TOMPKIN: All right.

23 Mr. Grattan, what I'm going to ask you to do is to
24 revisit what we have previously marked as
25 Exhibit Nine because I think we may have been

1 looking at or referring to separate documents. So
2 can you start over, in terms of the separate
3 exhibits that Mr. Moore is sponsoring.

4 APPLICANT COUNSEL GRATTAN: Yes. Maybe
5 we could start where we were last in agreement. I
6 think it was 7.0 section, Natural Gas, which was
7 the August 2001, which was our Exhibit One.

8 HEARING OFFICER TOMPKIN: All right.

9 APPLICANT COUNSEL GRATTAN: And we are
10 at Appendix A of the applicant's initial impact
11 study, which is Exhibit Nine.

12 HEARING OFFICER TOMPKIN: All right.

13 APPLICANT COUNSEL GRATTAN: We are now
14 at revision one to the applicant's system impact
15 study, and I believe we offered that up and I
16 think you assigned a Number Ten to that.

17 HEARING OFFICER TOMPKIN: Now, just let
18 me back up. Exhibit Nine is Appendix A and that's
19 what number on your original --

20 APPLICANT COUNSEL GRATTAN: We're on the
21 same -- I mean, we have -- What we had before is
22 irrelevant. We're on your page now.

23 HEARING OFFICER TOMPKIN: Okay. So
24 Exhibit Ten would be --

25 APPLICANT COUNSEL GRATTAN: Exhibit Ten

1 would be revision one to the applicant's system
2 impact and facilities study.

3 HEARING OFFICER TOMPKIN: All right.
4 That will be marked as Exhibit Ten.

5 (Thereupon, the above-referenced
6 document was marked as Staff's Exhibit
7 10 for identification.)

8 APPLICANT COUNSEL GRATTAN: Appendices A
9 through A-3, Electrical Transmission, that is part
10 of Applicant's Exhibit -- excuse me, part of the
11 Committee's Exhibit Two.

12 HEARING OFFICER TOMPKIN: Okay.
13 (Thereupon, the above-referenced sections of
14 the document marked as Staff's Exhibit 2 for
15 identification, were received into evidence.)

16 APPLICANT COUNSEL GRATTAN: Data
17 Response, Number 38, Transmission, November 2001.
18 We don't have that number on our list.

19 HEARING OFFICER TOMPKIN: So would that
20 be your next separate exhibit in order, Exhibit 11
21 on the Committee's exhibit list?

22 APPLICANT COUNSEL GRATTAN: Yes.

23 HEARING OFFICER TOMPKIN: All right.
24 Then we'll mark the November 2001 data response --

25 APPLICANT COUNSEL GRATTAN: Data

1 Response 38, Transmission, November 2002 (sic).

2 HEARING OFFICER TOMPKIN: Okay. That
3 will be marked for identification as Exhibit 11.

4 (Thereupon, the above-referenced
5 document was marked as Staff's Exhibit
6 11 for identification.)

7 THE WITNESS: November 2001, John.

8 APPLICANT COUNSEL GRATTAN: Excuse me,
9 2001.

10 HEARING OFFICER TOMPKIN: All right.

11 APPLICANT COUNSEL GRATTAN: And next
12 would be Appendix J, Engineering Design Criteria,
13 August 2002, and that is part of the Committee's
14 Exhibit One.

15 THE WITNESS: 2001.

16 APPLICANT COUNSEL GRATTAN: Yeah, 2001,
17 August 2001.

18 (Thereupon, the above-referenced section of
19 the document marked as Staff's Exhibit 1 for
20 identification was received into evidence.)

21 And finally -- I was waiting for a
22 number.

23 HEARING OFFICER TOMPKIN: Oh, I thought
24 you said Appendix J is part of Exhibit One.

25 APPLICANT COUNSEL GRATTAN: You're

1 right, part of Exhibit One. And the Wet Weather
2 Contingency Construction Plan, December 2001. And
3 this is the first time this has been offered.

4 HEARING OFFICER TOMPKIN: All right.
5 We'll mark the contingency plan as Exhibit 12 for
6 identification.

7 (Thereupon, the above-referenced
8 document was marked as Staff's Exhibit
9 12 for identification.)

10 HEARING OFFICER TOMPKIN: And is that
11 listed on your original exhibit list?

12 APPLICANT COUNSEL GRATTAN: Yes, it was,
13 it was listed as Number Three.

14 HEARING OFFICER TOMPKIN: All right.

15 PRESIDING COMMISSIONER PERNELL:
16 Mr. Grattan?

17 APPLICANT COUNSEL GRATTAN: Yes?

18 PRESIDING COMMISSIONER PERNELL: Are you
19 done, or --

20 APPLICANT COUNSEL GRATTAN: Yes, and
21 we'd move these exhibits into evidence.

22 PRESIDING COMMISSIONER PERNELL: Okay.

23 HEARING OFFICER TOMPKIN: Is there any
24 objection by any party to the exhibits?

25 STAFF COUNSEL WILLIS: I just have a

1 question regarding clarification.

2 PRESIDING COMMISSIONER PERNELL: Would
3 you speak up, please.

4 STAFF COUNSEL WILLIS: Oh, which number
5 is Exhibit Nine? I think I'm missing -- I missed
6 that one.

7 PRESIDING COMMISSIONER PERNELL: The
8 question is?

9 STAFF COUNSEL WILLIS: On the
10 applicant's numbering, which is the Exhibit Nine?

11 HEARING OFFICER TOMPKIN: I have
12 indicated on the Committee's exhibit list Appendix
13 A as Exhibit Nine. I don't know what that is on
14 the applicant's numbering. I'm not clear on that.

15 STAFF COUNSEL WILLIS: Thank you.

16 HEARING OFFICER TOMPKIN: Hearing no
17 objection, the testimony sponsored by the witness
18 will be admitted in evidence.

19 (Thereupon, the above-referenced documents,
20 marked as Staff's Exhibits 9-12 for
21 identification, were received into evidence.)

22 HEARING OFFICER TOMPKIN: All right.
23 Anything further for this witness, Mr. Grattan?

24 APPLICANT COUNSEL GRATTAN: No. The
25 witness has already been sworn in. Perhaps we

1 could address efficiency and reliability?

2 HEARING OFFICER TOMPKIN: Yes.

3 APPLICANT COUNSEL GRATTAN: I think
4 those we can address as one. They're very brief.

5 HEARING OFFICER TOMPKIN: All right.
6 You may proceed.

7 DIRECT EXAMINATION

8 BY APPLICANT COUNSEL GRATTAN:

9 Q Mr. Moore, you've previously stated your
10 qualifications and been sworn. Did you prepare
11 testimony with respect to efficiency and
12 reliability?

13 A Yes, I did, and they're covered in the
14 same sections as the previous. Do you need me to
15 restate?

16 Q No.

17 HEARING OFFICER TOMPKIN: No, that's not
18 necessary.

19 BY APPLICANT COUNSEL GRATTAN:

20 Q And can you affirm that testimony under
21 oath today?

22 A Yes, I do.

23 Q And we've been through the exhibits.
24 Could you -- Do you have any corrections or
25 modifications to your testimony?

1 A No, I do not.

2 Q And could you briefly summarize that
3 testimony.

4 A Yes. The Tracy peaker project, again,
5 is configured with two GE 78 industrial gas
6 turbines. The industrial gas turbines are heavy-
7 duty turbines, designed and constructed for
8 maximum reliability. The project has projected 96
9 percent availability on an annual average basis,
10 and over a 98 percent for summer months.

11 The peaker project was proposed in
12 answer to the Department of Water Resources'
13 identified need for peaking projects to deliver
14 energy in 2002 and beyond, and to be available to
15 respond to electrical system demands with
16 extremely quick start-up times.

17 The turbines selected for the project --
18 As previously mentioned, the turbines selected for
19 this project were based on an option that this
20 project could go combined-cycle in the DWR
21 contract, and that option was not elected. But
22 the turbines in the simple-cycle configuration are
23 configured with dry low-NOx combustors, and again,
24 they're configured with an SCR system that will
25 allow them to be the first frame units that we're

1 aware of in a simple-cycle power project to meet
2 the five ppm NOx BACT level. And this is
3 accomplished through the SCR system using blowers
4 that will lower the turbine exhaust.

5 Q Does that conclude your summary?

6 A Yes.

7 Q Maybe I can ask you some questions to
8 clarify here. Can you tell us why specifically
9 GWF selected a heavy industrial turbine instead of
10 an aero derivative?

11 PRESIDING COMMISSIONER PERNELL:

12 Mr. Grattan, you have to get closer.

13 BY APPLICANT COUNSEL GRATTAN:

14 Q Could you tell us why or underline why
15 GWF selected a heavy industrial turbine as opposed
16 to an aero derivative?

17 A Again, as we mentioned, this project had
18 a combined-cycle option which was not selected.
19 In the combined-cycle configuration, this project
20 would have had an overall better efficiency than
21 an aero derivative counterpart. An additional
22 benefit of this unit is that with the dry low-NOx
23 combustors, these turbines do not use water for
24 NOx control, so they have -- the only water used
25 on the project is for evap cooling, evaporative

1 cooling of the inlet air which improves the
2 efficiency and the output of the turbine.

3 Q So if what you're saying is that you
4 selected a heavy industrial turbine because it
5 would function better in a combined-cycle mode,
6 but DWR did not exercise the option for you to go
7 combined-cycle --

8 A That is true, and the other selection
9 point is the known reliability of the industrial
10 turbines.

11 Q In your evaluation of the appropriate
12 emissions control measures to put on this plant,
13 did you evaluate the SCONOx, the technology known
14 as the SCONOx technology and could you, in your --
15 if the answer is yes, could you first explain the
16 SCONOx technology.

17 A We did do an evaluation on the SCONOx.
18 That's a different technology that does not use
19 ammonia for NOx control, it uses a series of
20 reactor vessels. The only installation of SCONOx
21 currently that we are aware of is a combined-cycle
22 LM2500 project in Southern California. It's more
23 of a demonstrated technology. It has not been
24 applied to frame machines.

25 We did look at the ability to apply that

1 technology to these turbines. That technology
2 works in a temperature range from 280 to 700
3 degrees. Like I say, that lines up a lot more
4 with the combined-cycle project. Our exhaust out
5 of the turbines is closer to 950 to 1000, and we
6 would have had to use significant amounts of
7 dilution air to get our exhaust down to where we
8 could have controlled NOx.

9 That would have made it mandatory that
10 pretty significant fans were running all hours
11 that the plant was running, which would have
12 decreased efficiency and also reliability.

13 Q Thank you. And could you explain or
14 tell us how this project was able to meet in
15 simple-cycle a BACT of 5 ppm NOx?

16 A Yes. We are working with Hamone
17 (phonetic), who is the SCR supplier, and there are
18 multiple different catalysts out there and the
19 catalyst we have selected is one that works up to
20 1050 degrees but also can work down to 850
21 degrees, and so, like I say, we are using that
22 catalyst with dilution air to drop the turbine
23 exhaust to 850, which maximizes the efficiency of
24 the SCR.

25 Q So dilution air, is that a blower?

1 A Yes, it is.

2 Q Okay, thank you.

3 APPLICANT COUNSEL GRATTAN: That's all I
4 have. The witness is available for cross
5 examination.

6 HEARING OFFICER TOMPKIN: All right.
7 Does staff wish to question this witness?

8 STAFF COUNSEL WILLIS: Not at this time.

9 HEARING OFFICER TOMPKIN: Does any
10 intervenor have questions for this witness?

11 INTERVENOR PINHEY: Thank you. Nicholas
12 Pinhey, City of Tracy.

13 CROSS EXAMINATION

14 BY INTERVENOR PINHEY:

15 Q What catalyst is being used with the
16 SCR?

17 A It's a Ceram III.

18 INTERVENOR PINHEY: Thank you.

19 CROSS EXAMINATION

20 BY INTERVENOR SARVEY:

21 Q Are you saying that SCONOx is infeasible
22 on this project or just it poses a hardship on the
23 applicant?

24 A Feasibility does take in economics; it's
25 also I guess what you consider it's a technology

1 that has not been proven on this technology or
2 these turbines.

3 Q So the lowering of emissions is related
4 to the technology and the cost of the technology,
5 rather than the feasibility of it?

6 A I'm sorry, could you repeat that,
7 Mr. Sarvey?

8 Q The availability of the technology is
9 not the issue. The issue is the cost-
10 effectiveness and it's not the feasibility
11 question, it's more a question of cost, then?

12 A And it's also -- It's a scale-up factor.
13 The unit that is running in Vernon, California is
14 on a, as I said, an LM2500 project. That system,
15 SCONox system has never been built for a turbine
16 of this size before. So it's more than an
17 economic decision, it's also a project -- it's a
18 scale-up and a technology risk, and --

19 Q In the FDOC you list several
20 technologically feasible alternatives. One is 2.5
21 parts per million. Can you comment on why that
22 technology or that type of equipment was rejected?

23 A Again, we are not aware of any projects
24 on a simple-cycle basis that have met and
25 demonstrated 2.5 on a frame machine.

1 Q In the BACT analysis it suggested this
2 is a technologically feasible application. It's
3 selective catalytic reduction, and it lists 2.5
4 parts per million VD at 15 percent O2. This is
5 out of your BACT analysis in the FDOC.

6 A Yes, and it might be helpful if you'd
7 read the entire BACT analysis there. That's only
8 part of the BACT analysis.

9 Q Well, I'm just addressing the
10 technologically feasible alternatives.

11 A I think without getting -- You and
12 perhaps the California Environmental Quality Act
13 have different definitions of feasibility. I
14 think you're talking about technical feasibility
15 regardless of cost. The operative definition
16 under the California Environmental Quality Act
17 takes into account cost.

18 Q So this technology is feasible, but you
19 are eliminating it due to cost analysis?

20 A It's not a demonstrated technology.

21 Q Is it technologically --

22 A On the turbines that we are using for
23 the project.

24 Q I'm not speaking of SCONOx, I'm speaking
25 of the 2.5 parts per million that are listed in

1 your BACT analysis.

2 APPLICANT COUNSEL GRATTAN: We may be
3 going beyond the ability of this witness to
4 testify with respect to what BACT is and how it's
5 derived, and we will put on an air quality witness
6 who will be pleased to address this issue.

7 INTERVENOR SARVEY: Are you suggesting
8 that at a later time?

9 APPLICANT COUNSEL GRATTAN: Yes, yes.
10 Tomorrow.

11 INTERVENOR SARVEY: Thank you,
12 Mr. Grattan.

13 INTERVENOR SUNDBERG: Yes, Irene
14 Sundberg.

15 CROSS EXAMINATION

16 BY INTERVENOR SUNDBERG:

17 Q Mr. Moore, you just testified to the
18 fact that SCONOx poses a technical risk; can you
19 explain that to me?

20 A What I meant by that is that that
21 technology has not been demonstrated on a project
22 that we are proposing a license for here.

23 INTERVENOR SUNDBERG: Thank you.

24 THE WITNESS: It's a reliability risk.

25 HEARING OFFICER TOMPKIN: Anything

1 further for this witness?

2 Thank you, Mr. Moore.

3 THE WITNESS: Thank you.

4 (Thereupon, the witness was
5 excused from the stand.)

6 APPLICANT COUNSEL GRATTAN: The exhibits
7 which this witness is sponsoring have been
8 previously admitted into evidence.

9 HEARING OFFICER TOMPKIN: All right, and
10 that's noted for the record. At this time we'll
11 give staff an opportunity to present a witness in
12 the areas of facility design, power plant
13 efficiency and power plant reliability.

14 STAFF COUNSEL WILLIS: Staff wishes to
15 call Steve Baker, and he will need to be sworn.

16 HEARING OFFICER TOMPKIN: Would the
17 reporter please swear in the witness.

18 Whereupon,

19 STEVE BAKER

20 Was called as a witness herein and, after first
21 being duly sworn, was examined and testified as
22 follows:

23 DIRECT EXAMINATION

24 BY STAFF COUNSEL WILLIS:

25 Q And, Mr. Baker, could you please state

1 your name for the record.

2 A Steve Baker.

3 Q Was the statement of your qualifications
4 attached to your testimony?

5 A Yes, it was.

6 Q And could you briefly state your
7 education and experience.

8 A I have a bachelor of science degree in
9 mechanical engineering, a master of business
10 administration, and I have nearly 28 years
11 experience in the electric power industry,
12 including design, construction, and startup of
13 power plants, licensing from the regulatory aspect
14 and from the developer's aspect. I've dealt with
15 generation technologies encompassing most of the
16 alternatives, including wind, solar, geothermal,
17 and hydroelectric. I've dealt with coal, oil,
18 gas-fired, and nuclear-fired power plants.

19 Q And tonight are you sponsoring the
20 testimony entitled Facility Design, Power Plant
21 Efficiency and Power Plant Reliability?

22 A Yes, I am.

23 Q Do you have any changes to your
24 testimony?

25 A No, I do not.

1 Q And do the opinions contained in your
2 testimony represent your best professional
3 judgment?

4 A Yes, they do.

5 Q The witness for the applicant just
6 completed his testimony in these same areas. Were
7 you present to hear that testimony?

8 A Yes, I was.

9 Q Do you have anything to add to that?

10 A No, I don't.

11 Q Okay.

12 STAFF COUNSEL WILLIS: At this time the
13 witness will be available for cross examination.

14 APPLICANT COUNSEL GRATTAN: Applicant
15 has no cross examination.

16 HEARING OFFICER TOMPKIN: Does any
17 intervenor have questions for this witness?

18 All right. Okay, at this time staff --

19 CROSS EXAMINATION

20 BY INTERVENOR SARVEY:

21 Q You've reviewed this project. Do you
22 feel that the SCONOX technology is feasible in
23 this project?

24 STAFF COUNSEL WILLIS: I'm going to
25 object to that question. I know the applicant

1 included SCONOX discussion under these topics;
2 however, these topics are considered under air
3 quality and not by this witness, and not under
4 staff's testimony.

5 INTERVENOR SARVEY: Thank you.

6 HEARING OFFICER TOMPKIN: I will sustain
7 the objection as beyond the scope. We will
8 address the air quality issue at tomorrow night's
9 session.

10 Ms. Willis?

11 STAFF COUNSEL WILLIS: Okay. At this
12 time staff would like to move the sections of the
13 staff assessment previously marked as
14 Exhibit Four, of Facility Design, Power Plant
15 Efficiency and Power Plant Reliability into the
16 record.

17 HEARING OFFICER TOMPKIN: Does any party
18 object to the admission of these sections into the
19 record?

20 Seeing no objection, the sections
21 identified by Ms. Willis will be admitted in
22 evidence.

23 (Thereupon, the above-referenced sections of
24 the document marked as Staff's Exhibit 4 for
25 identification were received into evidence.)

1 HEARING OFFICER TOMPKIN: At this time,
2 then, if there's nothing further for this witness,
3 we will proceed to the next section, which is
4 Project Alternatives.

5 (Thereupon, the witness was
6 excused from the stand.)

7 HEARING OFFICER TOMPKIN: And we'd ask
8 the applicant to call its witness.

9 APPLICANT COUNSEL GRATTAN: Yes. The
10 applicant calls Mr. Douglas Wheeler.

11 HEARING OFFICER TOMPKIN: I'm going to
12 ask the reporter to swear in the witness at this
13 time.

14 Whereupon,

15 DOUGLAS WHEELER
16 Was called as a witness herein and, after first
17 being duly sworn, was examined and testified as
18 follows:

19 HEARING OFFICER TOMPKIN: Mr. Grattan?

20 APPLICANT COUNSEL GRATTAN: Yes.

21 DIRECT EXAMINATION

22 BY APPLICANT COUNSEL GRATTAN:

23 Q Could you please give us your name,
24 address, and current employment.

25 A Yes. My name is Doug Wheeler, 4300

1 Railroad Avenue, Pittsburg, California. I'm
2 currently employed by GWF Power Systems as vice
3 president of Business Development.

4 Q And could you explain your role in this
5 project and briefly outline your qualifications
6 which previously have been submitted.

7 A My role in this project is as project
8 manager for the GWF team. I have a bachelor's and
9 master's in chemistry. I have been employed by
10 GWF for the -- since 1986, working in the
11 permitting, licensing, operation, and maintenance
12 of power plants.

13 Q And have you prepared and previously
14 submitted written testimony in this proceeding?

15 A Yes, I have.

16 Q What testimony was that?

17 A It was testimony covering Project
18 Alternatives.

19 Q And are you sponsoring any exhibits in
20 addition to your testimony here today?

21 A Yes, I am.

22 Q And could you tell us what they are.

23 A In addition to my testimony, I am
24 sponsoring Section 5.0 of the original application
25 dated August 2001; Section 5.0 of the application

1 supplement dated October 2001.

2 Q And can you affirm your previous
3 testimony under oath here today?

4 A Yes, I can.

5 Q Do you have any corrections or
6 modifications to that testimony?

7 A No, I do not.

8 Q Could you summarize your testimony here?

9 A The testimony I have provided summarizes
10 the alternative site locations, alternative
11 equipment configurations, alternative transmission
12 interconnections, evaluated for the proposed
13 project. In addition to the project locations,
14 site locations, we also analyzed a no-project
15 alternative. The alternatives were analyzed in
16 the context of GWF's key project objectives.

17 Those project objectives include
18 interconnection with a major substation, having
19 capacity for the proposed project in north, north
20 of path 15. The second objective, provide a
21 market-responsive source for power to the
22 California energy market. The third objective,
23 conform to the provisions of an existing
24 California Department of Water Resources contract.

25 In addition to the three objectives

1 stated, there were two subsidiary purposes for the
2 project. One, as has been previously testified
3 to, to be on line in a time frame to meet the
4 provisions of the California Department of Water
5 Resources contract. And to be a minor source
6 under the Federal Clean Air Act in order to meet
7 the contractual deadlines in the contract.

8 GWF selected the proposed site for a
9 couple of primary reasons. It will require the
10 least or minimize the infrastructure construction
11 requirements. Those would be for transmission and
12 access. And fuel gas for the project is a natural
13 gas interconnection.

14 In addition, the project would require a
15 relatively short water supply pipeline from the
16 water supply, the Delta Mendota canal, which is
17 1470 feet in length.

18 Q That concludes your summary?

19 A Yes, it does.

20 Q If I can draw you out a little bit here,
21 you've located this project on basically land that
22 is, under the county's plan is basically zoned
23 agricultural. Did you look at any industrially
24 zoned property?

25 A Yes, we did. We evaluated an

1 industrially zoned site contiguous to the existing
2 Tracy Biomass plant.

3 Q And why did you not select that
4 industrially zoned site?

5 A Because of the contiguous nature of the
6 industrially zoned property to the Biomass plant,
7 the project would have been considered, the
8 proposed project would have been considered a
9 major modification to an existing source, and
10 would have required a prevention of significant
11 determination permit from EPA, which would not
12 have satisfied the project time objectives of the
13 project.

14 Q And the time objectives were based on
15 the Department of Water Resources contract?

16 A That is correct.

17 Q So based on the answer that you've just
18 given, would you say that given your
19 infrastructure requirements and your timing
20 requirements that you were basically required to
21 locate on this site or a nearby ag 40 site?

22 A That is correct.

23 Q And can you briefly -- I'm not sure
24 whether I caught it, maybe the audience did, but
25 can you briefly summarize the distances to connect

1 with infrastructure at the site you're on, the
2 site the project is proposed for?

3 A The proposed site, the transmission
4 interconnection would be to transmission lines
5 located on the project site, and to a gas
6 transmission line which is also located on the
7 project site.

8 Q And how about water?

9 A Water would be provided from the Delta
10 Mendota canal and would require a short linear
11 1,470-foot pipeline to interconnect to the Delta
12 Mendota canal turnout.

13 Q So your interconnection for transmission
14 and gas is on-site, and your interconnection to
15 water is 1400 feet away, roughly.

16 A That's correct.

17 Q Thank you.

18 APPLICANT COUNSEL GRATTAN: That's all
19 we have. The witness is available for cross.

20 HEARING OFFICER TOMPKIN: Does staff
21 wish to question the witness?

22 STAFF COUNSEL WILLIS: No, we don't.

23 HEARING OFFICER TOMPKIN: Does any
24 intervenor have questions for this witness?
25 Mr. Sarvey?

1 CROSS EXAMINATION

2 BY INTERVENOR SARVEY:

3 Q You mentioned that the Biomass plant was
4 ruled out as an alternative because of the time
5 objective with your contract with the Department
6 of Water Resources; is that correct?

7 A My testimony was that the project
8 located adjacent and contiguous to the Tracy
9 Biomass plant would have required a PSD permit
10 issued by the Environmental Protection Agency. We
11 met with EPA. The time frame that they gave us
12 for issuing the PSD permit was six to nine months,
13 which was not consistent with the time objectives
14 associated with the project being in commercial
15 operation consistent with the contract.

16 Q And you also rejected a site near the
17 Tesla substation. Can you comment on why that
18 site was rejected?

19 A I believe that the site that you're
20 referring to was in the staff assessment. It may
21 have been referred to as the Midway Road site.
22 That was an alternative site that was analyzed by
23 the Energy Commission staff.

24 Q Does your testimony provide any evidence
25 of compliance with CEQA requirements to identify

1 the no-project and reduced-project alternatives,
2 irrespective of economic feasibility?

3 APPLICANT COUNSEL GRATTAN: I'm going to
4 object, because this calls for a legal conclusion
5 here.

6 PRESIDING COMMISSIONER PERNELL: Can you
7 restate the question?

8 BY INTERVENOR SARVEY:

9 Q Were any environmental and economic
10 feasibility studies performed on alternative sites
11 or technologies?

12 A Excuse me, Mr. Sarvey, could you repeat
13 the question? I'm sorry.

14 Q Were any environmental and economic
15 feasibility studies performed on alternative sites
16 or technologies?

17 A We did evaluate environmental issues,
18 and they are included in the application.

19 INTERVENOR SARVEY: I asked to have a
20 witness substitution under Project Alternatives of
21 Mike Boyd, and I would request to be able to call
22 him, please.

23 APPLICANT COUNSEL GRATTAN: Objection.

24 HEARING OFFICER TOMPKIN: Before we even
25 reach that issue, what we need to do is finish

1 with this witness.

2 INTERVENOR SARVEY: Okay.

3 HEARING OFFICER TOMPKIN: And then we'll
4 address the issue of substitution of Mr. Boyd and
5 the objection to that substitution.

6 INTERVENOR SARVEY: Thank you,
7 Mr. Wheeler.

8 HEARING OFFICER TOMPKIN: Do we have any
9 further questions for this witness?

10 All right. I'm sorry, sir, who are you?

11 MR. TIMMINS: Harold Timmins.

12 HEARING OFFICER TOMPKIN: All right.

13 Right now we're only allowing parties to
14 participate. We will take public comment at the
15 end of the session.

16 MR. TIMMINS: Okay, because it has to do
17 with transmission lines.

18 HEARING OFFICER TOMPKIN: Mr. Grattan?

19 APPLICANT COUNSEL GRATTAN: I would
20 request permission now, in the interest of some
21 efficiency, there have been -- while I have
22 Mr. Wheeler up here -- there have been only two
23 questions about the water use of this project. We
24 didn't have Mr. Wheeler as a witness on the water,
25 but I would like to see if Mr. Wheeler could

1 respond to the questions regarding water
2 availability, and those would be questions that
3 were raised by the City of Tracy and also by
4 Mr. Sarvey.

5 STAFF COUNSEL WILLIS: Actually, we
6 would prefer that it be handled during the water
7 testimony and not during Alternatives.

8 APPLICANT COUNSEL GRATTAN: That's fine.
9 We'll call him.

10 HEARING OFFICER TOMPKIN: Thank you.

11 APPLICANT COUNSEL GRATTAN: I got the
12 ear signal. That's fine. We'll call Mr. Wheeler
13 back when water is raised.

14 HEARING OFFICER TOMPKIN: Did you wish
15 to offer the testimony sponsored by Mr. Wheeler at
16 this time?

17 APPLICANT COUNSEL GRATTAN: Yes, thank
18 you. At this time we would offer Mr. Wheeler's
19 sponsor of Section 5, and that's of the original
20 application, Exhibit One, and Section 5 of the
21 supplement, and that's your Exhibit Two.

22 HEARING OFFICER TOMPKIN: Is there any
23 objection by any party to the testimony or
24 evidence sponsored by this witness?

25 Seeing no objection, those sections

1 identified by Mr. Grattan will be admitted in
2 evidence.

3 APPLICANT COUNSEL GRATTAN: Thank you.

4 (Thereupon, the above-referenced sections of
5 documents marked as Staff's Exhibit 1 & 2 for
6 identification, were received into evidence.)

7 HEARING OFFICER TOMPKIN: Thank you,
8 Mr. Wheeler.

9 (Thereupon, the witness was
10 excused from the stand.)

11 HEARING OFFICER TOMPKIN: At this time
12 we'll proceed to evidence by intervenors or
13 objections to witnesses on this particular matter.

14 STAFF COUNSEL WILLIS: Staff still has a
15 witness that we need to present.

16 HEARING OFFICER TOMPKIN: Oh, I'm sorry.

17 At this time, then, we'll give staff an
18 opportunity to call its witness for Alternatives.

19 STAFF COUNSEL WILLIS: Thank you. Staff
20 calls Susan Lee, and she'll need to be sworn in.
21 Whereupon,

22 SUSAN LEE

23 Was called as a witness herein and, after first
24 being duly sworn, was examined and testified as
25 follows:

1 HEARING OFFICER TOMPKIN: Go ahead.

2 DIRECT EXAMINATION

3 BY STAFF COUNSEL WILLIS:

4 Q And could you please state your name for
5 the record.

6 A Yes, it's Susan Lee.

7 Q And was a statement of your
8 qualifications attached to your testimony?

9 A Yes, it was.

10 Q And could you briefly state your
11 education and experience as it pertains to
12 analyzing alternatives.

13 A Sure. Yes, I have a bachelor's degree
14 in geology, and a master's degree in applied earth
15 science from Stanford. I have 18 years of
16 experience in environmental impact assessment,
17 including project management and compliance
18 projects. And I've managed environmental projects
19 for the Energy Commission, including the Modesto
20 power plant project.

21 Q Thank you. Are you sponsoring the
22 testimony entitled Alternatives in the staff
23 assessment?

24 A Yes, I am.

25 Q Do you have any changes to your

1 testimony?

2 A No.

3 Q And do the opinions contained in your
4 testimony represent your best professional
5 judgment?

6 A Yes, they do.

7 Q Ms. Lee, could you please state the
8 purpose of the staff's alternatives analysis.

9 A Sure. The purpose of the alternatives
10 analysis is to comply with the California
11 Environmental Quality Act, or CEQA. We described
12 the alternatives to the proposed project in order
13 to give the decision-makers information so they
14 can consider the impacts of the proposed project
15 in comparison to alternatives.

16 As required by CEQA, we analyze
17 alternatives based on their potential to avoid or
18 lessen the impacts of the proposed project. While
19 no significant impacts have been identified for
20 this project, the Energy Commission, even if it
21 does find that significant impacts have been
22 identified, cannot direct the applicant to build
23 the project at an alternative site; the Commission
24 would have to direct to deny the application and
25 the applicant would then be submitting a new

1 application for a different site.

2 COMMISSIONER LAURIE: I'm sorry, can you
3 repeat your last sentence, please?

4 THE WITNESS: Yes. I was trying to
5 clarify the fact that if an alternative site were
6 found to be superior to the proposed project, the
7 Commission couldn't direct the applicant to
8 construct at that site, that, as the Commissioner
9 explained earlier, the applicant would have to
10 resubmit an application with an application for
11 the alternative site itself in order for the
12 Commission to be able to accept the project
13 constructed at that site.

14 COMMISSIONER LAURIE: Is that true even
15 if there's a finding of a CEQA override? Not a
16 Warren Alquist override, but a CEQA override?

17 THE WITNESS: I believe so.

18 COMMISSIONER LAURIE: Thank you.

19 BY STAFF COUNSEL WILLIS:

20 Q Are the alternatives to the proposed
21 project analyzed at the same level of detail as
22 the proposed project?

23 A No, they're not. In accordance with
24 CEQA's requirements, alternatives are allowed to
25 be analyzed at a lesser level of detail.

1 Q What was the methodology used for your
2 alternatives analysis?

3 A The first thing we did was determine the
4 objectives of the project. The second thing is,
5 based on the assessment that's done in the issues
6 identification report and in the staff assessment
7 itself, we look for significant environmental
8 impacts that may have been identified.

9 In this case, no significant impacts
10 were identified. So we looked at the issue areas
11 that are of most concern to the applicant, to the
12 agencies and the public, which include biology,
13 land use, noise, air quality and visual resources.

14 We then considered whether there could
15 be alternative technologies that might serve as
16 alternatives to the project, or whether
17 alternative locations could serve as alternatives.
18 And as required by CEQA, we considered the no-
19 project alternative, which is the case in which
20 the project would not be built at all.

21 Q Thank you. Could you briefly list
22 staff's alternative site identification process.

23 A Yes. The first thing we look at in
24 looking for an alternative site is a site that's
25 appropriately zoned. In this case, either a site

1 that's zoned industrial or in a location where a
2 power plant would not conflict with surrounding
3 land uses. We then look to see that the site is
4 vacant and available for a power plant. And then
5 we look to see whether infrastructure is available
6 and what the distance is from infrastructure for
7 natural gas transmission and water.

8 Q Based on your screening criteria, how
9 many sites did you assess in more detail?

10 A We considered three sites.

11 Q Before we move on, we have an overhead
12 that we would like to show just for illustrative
13 purposes. This is on our exhibit list as
14 Alternatives Figure One. It is from the staff
15 assessment on page 7-6, and we can either mark
16 that or include that as part of our Exhibit Number
17 Four. It is actually part of our staff
18 assessment.

19 HEARING OFFICER TOMPKIN: Well, how
20 would you like to do it?

21 STAFF COUNSEL WILLIS: It's up to the
22 committee. We're fine with just using it as part
23 of our staff assessment. It's just for discussion
24 purposes.

25 HEARING OFFICER TOMPKIN: Well, why

1 don't we do that rather than duplicate.

2 STAFF COUNSEL WILLIS: Thank you.

3 BY STAFF COUNSEL WILLIS:

4 Q Could you please indicate on this map
5 the location of each site.

6 A Yeah. Starting from east to west, which
7 is from like right to left, as you're looking at
8 the map there, the first alternative site that we
9 looked at was what we called the Schulte Road
10 site, which is a site immediately west of the
11 Tracy Biomass plant. The second site we looked at
12 is called the I-580 site, and it's immediately
13 west of the I-580 and just south of Patterson Pass
14 Road. And the third site we looked at was called
15 the Midway Road site, which is the site north of
16 the Tesla substation.

17 Q Thank you. You compared the alternative
18 sites to the screening criteria. What were the
19 advantages and disadvantages of each site?

20 A Okay. The Schulte Road site, which is
21 adjacent to the Tracy Biomass plant, has the
22 advantage of being zoned as an industrial site.
23 Also, its visual impact would be minimized because
24 it would be located adjacent to the Tracy Biomass
25 facility itself. And also, this site is already

1 disturbed, so the biological resources impacts
2 would be minimized. The disadvantages of the
3 Schulte Road site are that the linears, the water,
4 gas and transmission lines, would be longer. And
5 because of the -- it would require more time-
6 consuming air quality permit as the applicant has
7 described.

8 The second site, the I-580 site, the
9 land here is currently in agricultural use, so
10 there is less likelihood of impact to biological
11 resources. The disadvantage of that site is that
12 it would be highly visible from the Interstate
13 580, which is a designated scenic highway.

14 The third site, the Midway Road site has
15 the advantage of being screened from views from
16 the west -- You can't see it from the valley --
17 and it's located adjacent to existing transmission
18 lines that feed the Tesla substation. It's not an
19 agricultural site, so agricultural land would not
20 be lost. The disadvantage of this site is that
21 there may be biological resources that could be
22 affected at that site.

23 Q Thank you. Did you also consider
24 alternative technologies?

25 A Yes, we did.

1 Q And what alternatives did you analyze?

2 A We looked at conservation first, and
3 then solar power, wind power, biomass, geothermal
4 and hydropower.

5 Q And what was your conclusion?

6 A While each one of these alternatives is
7 a component of the state's electrical need in
8 terms of serving our supply, they're not viable
9 alternatives to this gas-fired plant, because each
10 one of these alternatives has environmental
11 impacts of its own, and they would require many
12 years to be developed, which conflicts with the
13 project objectives.

14 Q And finally, what were your overall
15 conclusions and recommendations?

16 A The conclusion of the alternative
17 section is that while each one of the alternative
18 sites that we looked at has advantages and
19 disadvantages with respect to the proposed site,
20 no alternative site was recommended over the
21 proposed project because no significant impacts
22 were identified for the proposed project itself.

23 Q Does that conclude your testimony?

24 A Yes, it does.

25 Q All right.

1 STAFF COUNSEL WILLIS: This witness is
2 available for cross examination.

3 COMMISSIONER LAURIE: Commissioner
4 Pernell, if I may?

5 PRESIDING COMMISSIONER PERNELL: Yes.

6 COMMISSIONER LAURIE: Ms. Lee, your
7 testimony was there are no significant impacts of
8 this project; is that correct?

9 THE WITNESS: That's correct, based on
10 the staff assessment, yes.

11 COMMISSIONER LAURIE: Okay. My reading
12 of the staff report indicates that there are
13 significant impacts, albeit they are mitigated,
14 leading to the conclusion that there are no
15 unmitigated significant impacts. Is my
16 understanding correct?

17 THE WITNESS: Yeah, that would be a more
18 accurate statement, that after mitigation there
19 remain no significant impacts of the project.

20 COMMISSIONER LAURIE: Thank you. So the
21 correct fact, the correct statement that there are
22 no unmitigated significant impacts of the project.

23 THE WITNESS: That's correct.

24 COMMISSIONER LAURIE: Thank you.

25 HEARING OFFICER TOMPKIN: Did the

1 applicant have any questions for this witness?

2 APPLICANT COUNSEL GRATTAN: No.

3 HEARING OFFICER TOMPKIN: Does any
4 intervenor have questions for this witness?

5 CROSS EXAMINATION

6 BY INTERVENOR SARVEY:

7 Q Was the Biomass plant at any time
8 considered as one of the locations for
9 alternatives?

10 A The Schulte Road site is a site that is
11 within the property of the Biomass site, so that
12 was our first alternative.

13 Q And then it would be directly next to
14 the Biomass plant.

15 A Right, directly west of the plant
16 itself.

17 Q And what was the reason that the staff
18 felt that wasn't appropriate?

19 A It was appropriate. That is one of the
20 sites that we considered in the analysis.

21 Q Okay, thank you. Would the fact that
22 GWF has a time objective with the Department of
23 Water Resources, would that be a reasonable reason
24 to eliminate the Biomass plant as an alternative
25 in the staff's opinion?

1 A The timing of the start-up of the
2 project is considered in a component of the
3 objectives that we look at. We didn't
4 specifically consider the DWR contract. Our
5 objectives are modified somewhat from the
6 applicant's objectives, so we had an objective of
7 getting the project on line by the end of 2002 or
8 thereafter, but not specifically related to DWR
9 contracts.

10 Q Was the staff's number one alternative
11 then would be the Biomass plant adjacent to it?

12 A We didn't make a determination of a
13 preferred site because, again, there were no
14 significant impacts identified for the project
15 itself that were not mitigated.

16 Q Have you ever been involved in a case,
17 in any case involving the CEQA override?

18 A Yes, I have.

19 Q And could you describe that, please?

20 A It was not an Energy Commission project,
21 but I have been involved in several cases with the
22 California Public Utilities Commission where
23 significant impacts were identified and
24 alternatives were selected.

25 Q Were any environmental and economic

1 feasibility studies performed on alternative sites
2 and technologies?

3 A In this project?

4 Q Yes.

5 A Just the alternative section that you
6 see in front of you, no more studies beyond that.

7 Q Do local government objections and
8 citizen objections to a plant siting rule out, or
9 is that a factor in the staff taking a site as an
10 alternative?

11 A We look at zoning in particular as an
12 indication of local government's opinion.

13 Q You mentioned that each of the
14 alternatives have an environmental impact. Can
15 you ask -- Can you identify the negative impacts
16 that you see from a biological point or any point?

17 A I don't understand the question.

18 Q What is the negative impact on
19 conservation?

20 A Oh, okay. The Alternatives section is
21 divided into two sections. First, there are
22 alternatives that were analyzed in detail, and
23 that includes the three alternative sites that
24 I've discussed. The other issues are alternatives
25 that were eliminated from more detailed

1 consideration because they were not considered to
2 be feasible alternatives. And the conservation
3 and the renewable energy sources are in that
4 category, so we didn't do biological or other
5 resource impact evaluations of those issues.

6 INTERVENOR SARVEY: Thank you very much.

7 HEARING OFFICER TOMPKIN: Do we have
8 anything further for this witness? Ms. Willis?

9 STAFF COUNSEL WILLIS: Okay. At this
10 time staff would like to move the section on
11 Project Alternatives into the record, and that
12 would be part of Exhibit Four.

13 HEARING OFFICER TOMPKIN: Are there any
14 objections to the testimony being sponsored by
15 this witness? Seeing no objection, the
16 Alternatives section will be admitted in evidence.

17 (Thereupon, the above-referenced section of
18 the document marked as Staff's Exhibit 4 for
19 identification was received into evidence.)

20 PRESIDING COMMISSIONER PERNELL: All
21 right.

22 (Thereupon, the witness was
23 excused from the stand.)

24 HEARING OFFICER TOMPKIN: We're going to
25 take a break for 15 minutes, give everybody a

1 chance to stretch and do whatever you need to do.

2 (Thereupon, a recess was held

3 off the record.)

4 PRESIDING COMMISSIONER PERNELL: Okay.

5 We are back on the record.

6 HEARING OFFICER TOMPKIN: Thank you,

7 Commissioner Pernell. Before we proceed, let me

8 simply note for the record that the City of Tracy

9 has also provided a tentative exhibit list, and

10 that list has been distributed to each party, and

11 it will be added to the record as were the other

12 exhibit lists.

13 When we took a recess, I think we were

14 still dealing with the alternatives, and it's my

15 understanding that Mr. Sarvey had a motion that he

16 wished to make at this time with respect to a

17 witness he would like to offer, so I'm going to

18 give him that opportunity.

19 INTERVENOR SARVEY: Yeah, I would like

20 to substitute Mike Boyd for Eric Pafhery.

21 APPLICANT COUNSEL GRATTAN: Objection.

22 INTERVENOR SARVEY: Would it be okay if

23 I just handed out my little simple handout on

24 alternatives, Mr. Grattan?

25 APPLICANT COUNSEL GRATTAN: That's fine,

1 Mr. Sarvey, fine by me. I mean, there are other
2 parties here.

3 INTERVENOR SARVEY: Thank you.

4 HEARING OFFICER TOMPKIN: Do you have
5 any objection to that, staff?

6 STAFF COUNSEL WILLIS: We don't have an
7 objection to him handing it out; obviously, we
8 haven't seen it, so I don't know if it's going in
9 as evidence or if it's just being handed out for
10 information purposes.

11 HEARING OFFICER TOMPKIN: Well, why
12 don't we give each party an opportunity to look at
13 it, and then we'll have Mr. Sarvey state how he's
14 offering it.

15 All right, Mr. Sarvey. Let's start with
16 the document that you've provided. What would you
17 like us to do with that document?

18 INTERVENOR SARVEY: Just submit it as
19 evidence, please.

20 HEARING OFFICER TOMPKIN: What we can do
21 is we can, if there is no objection, we can accept
22 it as administrative hearsay, and that means it's
23 used to supplement the record.

24 INTERVENOR SARVEY: Thank you.

25 HEARING OFFICER TOMPKIN: Is there any

1 objection to accepting the document as
2 administrative hearsay?

3 APPLICANT COUNSEL GRATTAN: No.

4 HEARING OFFICER TOMPKIN: All right.

5 Then the document provided by Mr. Sarvey will be
6 marked as Exhibit 13, as administrative hearsay,
7 and admitted for that purpose only.

8 And the document consists of three
9 pages, a diagram and two photostatic pictures.
10 The top page is Combined-Cycle Technology.

11 (Thereupon, the above-referenced document was
12 marked as Staff's Exhibit 13 for
13 identification and received into evidence.)

14 HEARING OFFICER TOMPKIN: Also, to
15 clarify for the record, Mr. Sarvey, in light of
16 the objection posed by staff and applicant, are
17 you withdrawing your offer of Mr. Boyd as a
18 witness in Alternatives at this time?

19 INTERVENOR SARVEY: Yes, ma'am.

20 HEARING OFFICER TOMPKIN: All right,
21 thank you.

22 Then we will proceed to the next topic
23 area, and that is Biological Resources.

24 Mr. Grattan?

25 APPLICANT COUNSEL GRATTAN: Yes. We

1 have our first witness, and this is Mr. Bill Van
2 Herwig.

3 HEARING OFFICER TOMPKIN: All right.

4 DIRECT EXAMINATION

5 BY APPLICANT COUNSEL GRATTAN:

6 Q And, Mr. Van Herwig, could you give us
7 your name, address, and current employment.

8 A My name is Bill Van Herwig. I'm a self-
9 employed biologist, 332 North Stein Road,
10 Bakersfield, California.

11 Q And have you prepared and previously
12 submitted written testimony in this proceeding?

13 A Yes, I have.

14 Q And that section would be?

15 A The Biological Resources section,
16 Section 8.2.

17 Q Okay, thank you. And are you sponsoring
18 any exhibits at this hearing?

19 A Yes, I am.

20 Q Can you tell us what they are.

21 A I'm sponsoring the Biological Resource
22 Implementation and Management Plan in Appendix K
23 of the application.

24 PRESIDING COMMISSIONER PERNELL: You
25 really need to get close.

1 APPLICANT COUNSEL GRATTAN: Yeah, lean
2 right into the microphone.

3 THE WITNESS: Okay. The Biological
4 Monitoring Plan in Appendix K of the application,
5 dated August 2001; the Sections 3.2 and 8.2 and
6 attachments thereof of the supplement to the
7 application dated October 2001. Dated responses
8 14 and 15 dated November 9th, 2001, dated
9 responses 83 and 84 dated November 28th, 2001.
10 And also, I'm sponsoring minutes of the San
11 Joaquin COG business meeting approving coverage
12 under the San Joaquin multi-species conservation
13 plan, October 25th, 2001. And the bioassessment
14 of the wet weather contingency plan.

15 BY APPLICANT COUNSEL GRATTAN:

16 Q Now, did you previously submit written
17 testimony in this case?

18 A Yes, I did.

19 Q And can you affirm that testimony, will
20 you affirm that testimony under oath today?

21 A I will.

22 Q Do you have any modifications or
23 corrections to that testimony?

24 A I do not.

25 Q Would you please summarize your

1 testimony.

2 A Based on extensive survey of the project
3 area, access road and water line, I have concluded
4 that the construction operation of this project
5 will not cause any significant impact,
6 individually or cumulatively, to biological
7 resources if appropriate avoidance and mitigation
8 measures are taken, including habitat compensation
9 in the San Joaquin County habitat conservation
10 plan.

11 Q Have you read the staff report and do
12 you agree with its conclusions?

13 A Yes, I have.

14 Q I neglected to ask you to summarize your
15 qualifications for us. Would you do that, please,
16 a little bit of your experience and
17 qualifications.

18 A I have a bachelor's degree in range and
19 wildlife ecology. I have been working with
20 natural resource conservation and management for
21 over 19 years, and 12 of those years as a
22 consultant.

23 Q And how many cases before the Energy
24 Commission have you testified as an expert
25 witness?

1 A Three.

2 Q Thank you. One further question: Have
3 you read the staff report?

4 A Yes, I have.

5 Q The biological section?

6 A Yes.

7 Q And do you agree with its conclusions
8 and conditions?

9 A Yes, I do.

10 Q That's all I have for this witness, and
11 the witness is available for cross examination.

12 HEARING OFFICER TOMPKIN: Does staff
13 wish to question this witness?

14 STAFF COUNSEL WILLIS: No, we don't.

15 HEARING OFFICER TOMPKIN: Does any
16 intervenor have questions for this witness?

17 Ms. Sundberg?

18 CROSS EXAMINATION

19 BY INTERVENOR SUNDBERG:

20 Q In your written testimony from the GWF
21 under tab six, you stated that with appropriate
22 avoidance and mitigation measures, the TPP will
23 not cause a significant impact, individually or
24 cumulatively, to biological resources.

25 In your expert opinion and when you made

1 the statement, what was the appropriate mitigation
2 that you stated needed to be required?

3 A The appropriate mitigation are measures
4 within the Biological Resource Mitigation and
5 Implementation Plan, BRMIMP, or the draft plan,
6 and they include all types of things like employee
7 education on sensitive species, speed limits,
8 different things like that. Plus, the
9 compensation for the permanent and temporary
10 disturbances, land will be placed in a
11 conservation bank into perpetuity for the species
12 that may be affected by this plant.

13 Q In your expert opinion what should be
14 appropriately avoided?

15 A There are some potential kit fox dens
16 that are near the plant site that should be
17 avoided.

18 Q Is the term "appropriately avoided" a
19 commonly used term in biological resource
20 analysis?

21 A Appropriately? Sometimes they --

22 Q Appropriately avoided was your
23 statement, sir.

24 A Sometimes it's not appropriate to avoid
25 them, like if they happen to be in the footprint

1 of the plant, there are conditions also in the
2 biological resource management plan that will --
3 that allow us to actually monitor, like potential
4 kit fox dens, and determine that they are not
5 being occupied, and then destroying the dens. If
6 that's done, well, then new dens or artificial
7 dens are made to replace those dens that are
8 taken.

9 Q Does the avoidance and mitigation that
10 you've recommended here tonight save the species,
11 the endangered species that are on the site?

12 APPLICANT COUNSEL GRATTAN: That assumes
13 a fact that's not in evidence. I would object to
14 that.

15 INTERVENOR SUNDBERG: Okay.

16 HEARING OFFICER TOMPKIN: Did you --
17 BY INTERVENOR SUNDBERG:

18 Q In purchasing mitigation away from the
19 City of Tracy, does it make it -- it makes it more
20 difficult for many of us that live here to have
21 the benefits of a natural site, from burrowing
22 owls, kit foxes and other endangered species
23 found, and flora in the area.

24 By making a donation to the San Joaquin
25 COG fund, can you tell me where these -- where the

1 funds are going to go to immediately? Are they
2 going to be a benefit of our area or is it going
3 to end up in some other area?

4 APPLICANT COUNSEL GRATTAN: Point of
5 clarification, I won't object to the question, but
6 what the applicant is doing in this case is not
7 making a donation. That implies something that is
8 voluntary and that perhaps could be conditioned or
9 taken back --

10 INTERVENOR SUNDBERG: Mitigation, excuse
11 me.

12 APPLICANT COUNSEL GRATTAN: fine.

13 THE WITNESS: I believe the site is
14 within San Joaquin County.

15 BY INTERVENOR SUNDBERG:

16 Q But you don't know for sure.

17 A No, I don't. That would be up to the --
18 I defer that question, I don't know for sure.

19 INTERVENOR SUNDBERG: Thank you.

20 PRESIDING COMMISSIONER PERNELL: Thank
21 you.

22 COMMISSIONER LAURIE: Commissioner
23 Pernell, a question as a followup to this witness,
24 please?

25 PRESIDING COMMISSIONER PERNELL:

1 Commissioner Laurie.

2 COMMISSIONER LAURIE: Sir, you just
3 testified that the impacts would require
4 mitigation; is that correct?

5 THE WITNESS: Yes.

6 COMMISSIONER LAURIE: And you indicated
7 in your testimony where these mitigation measures
8 are identified; is that correct?

9 THE WITNESS: Yes, I did.

10 COMMISSIONER LAURIE: Have those
11 proposed mitigation measures been incorporated as
12 proposed mitigation measures in the final staff
13 assessment?

14 THE WITNESS: Yes, they are in the
15 approved -- they're in the draft biological
16 resource --

17 COMMISSIONER LAURIE: Are those proposed
18 mitigation measures proposed to be conditions
19 attached to the project?

20 THE WITNESS: Yes, they are.

21 COMMISSIONER LAURIE: Thank you.

22 CROSS EXAMINATION

23 BY INTERVENOR SARVEY:

24 Q Have you had an opportunity to review
25 Mr. Smallwood's analysis of this project area?

1 A No, I have not.

2 Q Have you received a copy of the --

3 A Yes, I have.

4 Q Okay. How much time do you feel would
5 be necessary to analyze this?

6 A I can't answer that question right now.

7 Q Okay. Well, whatever time you're
8 willing to, we're willing to stipulate and wait
9 for your answer, if you would like to review it.

10 Does this environmental review process
11 allow for public participation on biological
12 impacts?

13 APPLICANT COUNSEL GRATTAN: That's a
14 legal question. I guess I'm going to object to
15 that. I don't know if the witness is qualified to
16 answer that.

17 HEARING OFFICER TOMPKIN: I'll sustain
18 the objection. You may ask your next question.

19 BY INTERVENOR SARVEY:

20 Q Was public input allowed on the
21 biological resource impact mitigation plan for the
22 TPP?

23 A I'm sorry, could you repeat the
24 question?

25 Q Was public input allowed on the

1 biological resource impact mitigation plan for
2 TPP?

3 APPLICANT COUNSEL GRATTAN: Once again,
4 I don't think the witness knows the answer to that
5 question. I think that might be more
6 appropriately addressed to the staff.

7 HEARING OFFICER TOMPKIN: Well, it might
8 be helpful if the witness doesn't know to simply
9 say "I don't know," and then we can move on.

10 THE WITNESS: I don't know.

11 BY INTERVENOR SARVEY:

12 Q How was the San Joaquin multi-species
13 habitat conservation and open space plan, STMCP,
14 impacted by the TPP?

15 A Repeat your question, please.

16 Q How was the San Joaquin County multi-
17 species habitat conservation and open space plan
18 impacted by the TPP, Tracy peaker project?

19 A I really don't understand your question,
20 I don't know.

21 Q What impacts did you identify in your
22 analysis on the multi-species habitat conservation
23 and open space plan from this plant?

24 A I'm not familiar with what you're
25 saying. I don't understand the question.

1 Q Okay. Is it possible that the applicant
2 missed any special status species in their
3 analysis?

4 A I'm not aware of any missed species.

5 Q Did the applicant identify all the
6 impacted special status species?

7 A I believe that the applicant did.

8 Q Is adequate compensation being provided
9 for the take of special status species?

10 A Yes.

11 Q Would the impact zone of emissions from
12 the TPP include a large enough geographical area
13 to assess the impact on special status species?

14 A I don't understand the question.

15 Q Is there a scientific basis for choosing
16 an area of six-mile radius around the Tracy peaker
17 plant to identify impacts on special status
18 species?

19 A In assessing the project, we went by
20 approved methodology, approved by the California
21 Energy Commission, the California Department of
22 Fish and Game, and the United States Fish and
23 Wildlife Service.

24 Q Since the majority of emissions are by
25 testimony in areas other than the six miles

1 surrounding the plant, wouldn't it be more
2 appropriate to look at other areas to decide where
3 these impacts on the special status species were
4 occurring?

5 APPLICANT COUNSEL GRATTAN: I'm going to
6 object to that question. We're getting into an
7 air quality question here.

8 BY INTERVENOR SARVEY:

9 Q Did your analysis of cumulative
10 biological resource impacts include the Thermal
11 Energy Development Corp. and Owens Brockway
12 Company?

13 APPLICANT COUNSEL GRATTAN: Once again,
14 I'm going to renew my objection. It's an air
15 emissions question.

16 INTERVENOR SARVEY: Well, the air
17 emissions we're discussing on the impact on the
18 biological resources, so isn't it appropriate at
19 this time?

20 APPLICANT COUNSEL GRATTAN: I would
21 continue my objection. We have gotten no offer of
22 proof that the impact from the plant is going to
23 impact species. There is nothing in any testimony
24 that's been submitted. We're very far afield.

25 BY INTERVENOR SARVEY:

1 Q Wouldn't the evidence that you have to
2 contribute to the SJMCP be enough proof that there
3 is some impact involved?

4 APPLICANT COUNSEL GRATTAN: Due to air
5 quality emissions?

6 INTERVENOR SARVEY: Anything related to
7 the plant: noise, air quality, lighting.

8 THE WITNESS: The habitat compensation
9 is strictly for the permanent and temporary
10 disturbance to habitat only.

11 BY INTERVENOR SARVEY:

12 Q Did you do any studies related to the
13 lighting and its effect on wildlife in the area?

14 A No.

15 Q Did you do anything in terms of noise on
16 its impact on biological species, mating,
17 whatever?

18 A No.

19 Q So the only impacts that you analyzed
20 were the direct impacts of the construction and
21 operations, correct?

22 A Yes.

23 INTERVENOR SARVEY: Thank you.

24 HEARING OFFICER TOMPKIN: Do we have
25 anything further with this witness?

1 APPLICANT COUNSEL GRATTAN: I want to
2 redirect if no one else wants to cross examine.

3 HEARING OFFICER TOMPKIN: Mr. Grattan,
4 you may proceed.

5 REDIRECT EXAMINATION

6 BY APPLICANT COUNSEL GRATTAN:

7 Q First, are there any kit fox dens on
8 site?

9 A During our survey, we did not find any
10 kit fox dens on the site. It was a cultivated oat
11 field.

12 Q There was a question raised on cross
13 with regard to is it possible that you may have
14 missed a species. Once again, how long have you
15 been in this business, Mr. Van Herwig, and also,
16 given the norms of survey, both literature and
17 physical survey, is it likely that you would have
18 missed a species?

19 A Not in the immediate vicinity of the
20 plant site. As I stated earlier, it is an oat
21 field. There are other species that are found
22 five and six miles away from the site, but they
23 would not be affected by the construction and
24 operation of the plant.

25 Q So the question, again, is it likely

1 that you would have missed the species on the
2 plant site or in the area around the plant site
3 where under the established protocols you're
4 required to look, given your experience?

5 A No, it is not likely.

6 Q Thank you. And did you follow all
7 standards and protocols in conducting the survey?
8 And maybe you could just briefly tell us where
9 those protocols originate, who publishes them and
10 what they are?

11 A The California Department of Fish and
12 Game and the United States Fish and Wildlife
13 Service have recommended protocols, and we also
14 submitted our methodology to the staff of the
15 California Energy Commission before we undertook
16 them, and they were approved.

17 Q Thank you.

18 INTERVENOR SARVEY: Can I be allowed
19 rebuttal?

20 APPLICANT COUNSEL GRATTAN: He can
21 recross.

22 HEARING OFFICER TOMPKIN: No, this is a
23 question, if you have an additional question.

24 INTERVENOR SARVEY: Okay, a rebuttal
25 question.

1 RE CROSS EXAMINATION

2 BY INTERVENOR SARVEY:

3 Q What time of year did you do your
4 examination of this property?

5 APPLICANT COUNSEL GRATTAN: Objection;
6 this goes beyond the scope of the cross
7 examination.

8 INTERVENOR SARVEY: Okay.

9 HEARING OFFICER TOMPKIN: I'll permit
10 some leeway, you may answer.

11 THE WITNESS: It was done in the spring,
12 spring and early summer.

13 INTERVENOR SARVEY: Can I approach the
14 witness? I want to offer some rebuttal evidence
15 to his contention that he had identified all
16 species, endangered species and listed species
17 also.

18 PRESIDING COMMISSIONER PERNELL: Why
19 don't you --

20 INTERVENOR SARVEY: I'd be happy to give
21 it to you.

22 APPLICANT COUNSEL GRATTAN: Wait, excuse
23 me. I'm going to have to object here. We're
24 being presented with what appears to be a
25 photograph. No basis has been established that

1 whatever is in this photograph is an endangered
2 species or a threatened species or any kind of a
3 listed species.

4 HEARING OFFICER TOMPKIN: I'll take that
5 as an objection for lack of foundation and prior
6 notice, and I think that is a valid objection. I
7 will sustain the objection.

8 INTERVENOR SARVEY: Yeah, if we could
9 take an opportunity to look at Dr. Smallwood's
10 report, we could specifically identify this from
11 his findings.

12 HEARING OFFICER TOMPKIN: Well, we don't
13 have any evidence from Dr. Smallwood before us.
14 He's not a witness and wasn't properly identified
15 as a witness.

16 INTERVENOR SARVEY: The public adviser
17 handed out his testimony as we all arrived.

18 HEARING OFFICER TOMPKIN: Well, I
19 haven't had an opportunity to look at it.

20 INTERVENOR SARVEY: We did docket it and
21 file it. I have a copy for you if you like.

22 HEARING OFFICER TOMPKIN: No, I'm
23 sustaining the objection at this time.

24 PRESIDING COMMISSIONER PERNELL: Do you
25 have any other questions?

1 INTERVENOR SARVEY: If you won't accept
2 it as a stipulation, will you accept it as an
3 offer of proof?

4 HEARING OFFICER TOMPKIN: An offer of
5 proof of what?

6 INTERVENOR SARVEY: Of listed species in
7 the area that were not identified in the
8 application.

9 APPLICANT COUNSEL GRATTAN: No
10 foundation; objection.

11 HEARING OFFICER TOMPKIN: I'll have to
12 sustain that objection.

13 INTERVENOR SARVEY: Thank you,
14 Mr. Grattan.

15 HEARING OFFICER TOMPKIN: Anything
16 further, Mr. Grattan?

17 APPLICANT COUNSEL GRATTAN: I have
18 nothing further.

19 HEARING OFFICER TOMPKIN: Thank you.

20 APPLICANT COUNSEL GRATTAN: Except I
21 move to move testimony and exhibits into evidence.

22 HEARING OFFICER TOMPKIN: Do you want to
23 repeat the testimony that's being sponsored at
24 this time?

25 APPLICANT COUNSEL GRATTAN: Pardon me?

1 HEARING OFFICER TOMPKIN: What testimony
2 is being sponsored?

3 APPLICANT COUNSEL GRATTAN: Oh, it's the
4 testimony on biological resources.

5 INTERVENOR SARVEY: I object to that
6 testimony being entered into the record as
7 incomplete.

8 HEARING OFFICER TOMPKIN: Do you wish to
9 respond, Mr. Grattan?

10 APPLICANT COUNSEL GRATTAN: Well, it's
11 an open-ended objection. I guess it's without
12 merit and foundation. The witness just testified
13 to the entire biological section, and the witness
14 has been cross examined, recross examined, and I
15 fail to understand the objection.

16 INTERVENOR SARVEY: I'm objecting to the
17 fact that Mr. Smallwood's report, which I timely
18 filed on my witness list, and also the
19 accompanying pictures were not entered into the
20 evidence. That's why I'm objecting to your report
21 as being incomplete.

22 APPLICANT COUNSEL GRATTAN: That has
23 nothing to do with the evidence presented by this
24 witness.

25 INTERVENOR SARVEY: Well, if his

1 testimony is incomplete, I would disagree with
2 that.

3 HEARING OFFICER TOMPKIN: Mr. Sarvey, I
4 will note your objection but I will overrule it,
5 that the witness is here and present and subject
6 to cross examination. You've had an opportunity
7 to ask all questions with respect to his testimony
8 and that is what is being offered at this time.

9 INTERVENOR SARVEY: Well, I would like
10 to object, and maybe this isn't the appropriate
11 time, that my testimony was not entered into the
12 record in terms of this biological resources, and
13 that I had submitted it timely.

14 HEARING OFFICER TOMPKIN: Well, what we
15 can do is we'll go ahead and we'll deal with the
16 testimony of this witness. I'm overruling your
17 objection. I will accept the testimony as
18 previously identified by Mr. Grattan and which is
19 outlined in the prefiled written testimony.

20 Is that a complete listing of the
21 testimony that's being sponsored, Mr. Grattan?

22 APPLICANT COUNSEL GRATTAN: The
23 testimony is being sponsored, but we also want to
24 make sure that the record has the exhibits that
25 were sponsored by Mr. Van Herwig. Why don't we go

1 through those now?

2 HEARING OFFICER TOMPKIN: Okay. Well,
3 will you go through those now.

4 APPLICANT COUNSEL GRATTAN: Okay.
5 Section 8.2 in the Biological Monitoring Plan in
6 Appendix K of the application dated August 2001;
7 that is already Exhibit One. We're adding no
8 sections to that. Also, Sections 3.2 and 8.2 and
9 attachments, the supplement to the application
10 dated October 2001. We're adding those portions
11 into Exhibit Two, what has already been designated
12 as Exhibit Two.

13 In addition, there will be three
14 additional exhibits.

15 HEARING OFFICER TOMPKIN: By additional
16 exhibits, you mean separate exhibits?

17 APPLICANT COUNSEL GRATTAN: Separate
18 exhibit numbers.

19 HEARING OFFICER TOMPKIN: All right.

20 APPLICANT COUNSEL GRATTAN: This will be
21 new Exhibit 14, I believe, following your
22 numbering.

23 So Exhibit 14 will be Data Responses 14
24 and 15, dated November 9th, 2001. That will be
25 Exhibit 14.

1 (Thereupon, the above-referenced
2 document was marked as Staff's Exhibit
3 14 for identification.)

4 HEARING OFFICER TOMPKIN: And could you
5 identify those on your exhibit list.

6 APPLICANT COUNSEL GRATTAN: They are not
7 on the exhibit list.

8 HEARING OFFICER TOMPKIN: All right.

9 APPLICANT COUNSEL GRATTAN: The next one
10 is Data Responses 83 and 84, dated November 28th,
11 2001. That will be Exhibit 15.

12 HEARING OFFICER TOMPKIN: Okay, and
13 those will be marked as Exhibit 15 for
14 identification.

15 (Thereupon, the above-referenced
16 document was marked as Staff's Exhibit
17 15 for identification.)

18 APPLICANT COUNSEL GRATTAN: Okay. Then
19 Number 17 on the exhibit list that you have in
20 front of you -- That is applicant's exhibit
21 list -- will be Exhibit 16. It's Number 17 on our
22 list, will now be Exhibit 16 in the record, and
23 that is the minutes of the San Joaquin COG
24 business meeting approving coverage under the
25 SJMSCP, October 25th, 2001.

1 HEARING OFFICER TOMPKIN: All right.
2 (Thereupon, the above-referenced
3 document was marked as Staff's Exhibit
4 16 for identification.)

5 APPLICANT COUNSEL GRATTAN: Okay. In
6 addition, biological portions of the wet weather
7 contingency plan on November 2001 that was
8 previously Exhibit 11.

9 APPLICANT COUNSEL GRATTAN: Thank you.

10 HEARING OFFICER TOMPKIN: Thank you.

11 And I will accept -- Do you have a
12 question, Ms. Sundberg?

13 INTERVENOR SUNDBERG: I object to
14 something they just entered into as --

15 HEARING OFFICER TOMPKIN: Okay. Well, I
16 had asked for objection --

17 PRESIDING COMMISSIONER PERNELL: Wait a
18 minute, wait, I'm sorry --

19 UNIDENTIFIED SPEAKER: We can't hear in
20 the back.

21 PRESIDING COMMISSIONER PERNELL: Okay.
22 Well --

23 UNIDENTIFIED SPEAKER: We can't hear
24 your -- You're conducting the meeting, and we
25 cannot hear a single word you're saying. And I

1 think that as a public meeting we should stop
2 until we can figure out how to fix your
3 microphone, because the people in the back of this
4 room cannot hear what you're saying. You're the
5 most important person because you're conducting
6 the meeting. I just wanted to say that real
7 quick.

8 HEARING OFFICER TOMPKIN: Okay. What
9 I'll do is I'll try to speak -- hold it to my
10 mouth.

11 PRESIDING COMMISSIONER PERNELL: Do a
12 test and see if they can hear you.

13 HEARING OFFICER TOMPKIN: Can you hear
14 me now if I put it right to my mouth?

15 I apologize, I thought you could hear,
16 so what I'll do is I'll put my mouth right on the
17 microphone and hopefully you'll be able to hear
18 everything from now on. You still can't hear me?

19 UNIDENTIFIED SPEAKER: Well, there's
20 plenty of empty seats.

21 STAFF COUNSEL WILLIS: I think they can
22 now.

23 HEARING OFFICER TOMPKIN: Ms. Sundberg?

24 INTERVENOR SUNDBERG: What I wanted to
25 know was I have a problem with the minutes from

1 the San Joaquin County COG meeting that you're
2 talking about. The minutes I received were not a
3 copy of the actual minutes, they were a copy of a
4 reprint that was done on a monthly article that
5 they put out or publication they put out. And so
6 I'm objecting to you putting those in as minutes
7 from that meeting.

8 HEARING OFFICER TOMPKIN: Mr. Grattan?

9 APPLICANT COUNSEL GRATTAN: I'm told
10 that that is a printout from the web site of the
11 San Joaquin COG. We'd be happy to authenticate
12 it. In the meantime, it is what it is.

13 INTERVENOR SUNDBERG: I would like it
14 authenticated and I would also like the original
15 copy of the minutes to be added to your
16 stipulation. That is not a copy of the minutes as
17 printed out by the San Joaquin County COG.

18 APPLICANT COUNSEL GRATTAN: We will get
19 the original minutes and file them and replace the
20 copy from the web site for you, Mrs. Sundberg.

21 INTERVENOR SUNDBERG: Thank you.

22 HEARING OFFICER TOMPKIN: Okay, then.
23 What we'll do is we'll defer ruling on Exhibit 16,
24 the minutes of the meeting. Exhibits 14 and 15,
25 as well as the sections previously identified by

1 Mr. Grattan, will be admitted in evidence.

2 (Thereupon, the above-referenced documents,
3 marked as Staff's Exhibits 14 & 15 for
4 identification, were received into evidence.)

5 HEARING OFFICER TOMPKIN: Mr. Sarvey?

6 INTERVENOR SARVEY: Yeah. I would like
7 to point out that today I received Mr. Stein's
8 cumulative air report, and that Dr. Smallwood's
9 report was actually submitted at approximately the
10 same time. And I feel that we're not receiving a
11 level playing field here and that submission of
12 his testimony is very important to my case. And
13 if we don't accept his testimony, you know, you do
14 it at your own risk, but it seems like you would
15 want to rebut this testimony.

16 That's all I have to say.

17 HEARING OFFICER TOMPKIN: Okay. What I
18 can do for you, Mr. Sarvey, or what I would
19 propose to you, let's put it like that, is that
20 possibly you -- you might be able to offer it as
21 administrative hearsay to supplement evidence in
22 the record. Mr. Smallwood was not properly
23 noticed and he's not available to the parties to
24 be examined, and they haven't had an opportunity
25 to review any of this.

1 You can offer it, it will be part of the
2 record, but it will not be the type of testimony
3 that's been provided here today, direct testimony.

4 INTERVENOR SARVEY: Well, it's already
5 been docketed, so there's really no need for that,
6 but thank you.

7 HEARING OFFICER TOMPKIN: All right.
8 Nothing further?

9 Thank you to this witness.

10 (Thereupon, the witness was
11 excused from the stand.)

12 HEARING OFFICER TOMPKIN: Staff, do you
13 have a witness in this area?

14 STAFF COUNSEL WILLIS: Yes, we do.
15 Staff calls Natasha Nelson, and she'll need to be
16 sworn in.

17 APPLICANT COUNSEL GRATTAN: Before
18 Ms. Nelson is sworn in, we do have another witness
19 in this area who will testify, whose testimony
20 will be limited to the impact of the wet weather
21 construction plan on amphibian species, and that's
22 Dr. Jennings. We can take staff witness first or
23 we can proceed with ours, whichever is efficient
24 and whichever pleases the hearing officer.

25 HEARING OFFICER TOMPKIN: Well, let's go

1 ahead with your witness, Mr. Grattan.

2 APPLICANT COUNSEL GRATTAN: Call

3 Dr. Jennings.

4 INTERVENOR SARVEY: I would have to

5 object to that; he's not on the witness list.

6 APPLICANT COUNSEL GRATTAN: He certainly

7 is. We prefiled testimony.

8 HEARING OFFICER TOMPKIN: All right.

9 PRESIDING COMMISSIONER PERNELL:

10 Dr. Jennings is not on our list.

11 HEARING OFFICER TOMPKIN: If you can

12 show that you're docketed and maybe I missed it,

13 if it was timely filed --

14 APPLICANT COUNSEL GRATTAN: We prefiled

15 testimony. We filed testimony January 24th for

16 Dr. Jennings. We'd be willing to offer his

17 declaration.

18 HEARING OFFICER TOMPKIN: I'm willing to

19 accept your representation. There were so many

20 documents filed, I thought I had everything, but

21 if you have a copy of that would it be helpful?

22 PRESIDING COMMISSIONER PERNELL: Does

23 that help in the back?

24 UNIDENTIFIED FEMALE SPEAKER: No.

25 UNIDENTIFIED MALE SPEAKER: She needs to

1 hold it a little further away. It's just the
2 opposite.

3 PRESIDING COMMISSIONER PERNELL: Okay.

4 HEARING OFFICER TOMPKIN: We'll go off
5 the record for a moment.

6 (Thereupon, a recess was held
7 off the record.)

8 APPLICANT COUNSEL GRATTAN: We'll
9 withdraw our offer to put Dr. Jennings on the
10 stand. He has submitted sworn testimony and we're
11 willing to stand by his declaration, which, I
12 might add, you've had, Mr. Sarvey, for more than a
13 month now.

14 HEARING OFFICER TOMPKIN: And I do
15 recognize this name, and it must have been an
16 oversight on my part, but it is contained in the
17 documents that were filed and made available to
18 the parties, Dr. Jennings' testimony as well as
19 his resume. And that was filed back in January,
20 so it was available.

21 INTERVENOR SARVEY: Will we be allowed a
22 week to respond to that?

23 HEARING OFFICER TOMPKIN: Well, at this
24 point, Mr. Grattan is offering the declaration and
25 you've had it for a month. I mean, you've been a

1 party throughout the proceeding so I know you've
2 had an opportunity to review it. And I hate to
3 hold the applicant responsible for what apparently
4 was an error on my part, especially when you had
5 notice and you had information available to you.

6 INTERVENOR SARVEY: Well, once --

7 HEARING OFFICER TOMPKIN: Mr. Grattan
8 withdrew his --

9 APPLICANT COUNSEL GRATTAN: Well,
10 we'll -- Actually, we'll leave the declaration in
11 there, given the hearing officer's ruling. And
12 again, you've had that testimony since the 24th of
13 January.

14 INTERVENOR SARVEY: I believe you're
15 required to notify us that that witness is going
16 to appear, that that testimony is going to be --

17 APPLICANT COUNSEL GRATTAN: That's fine,
18 we'll just leave the declaration in. There's no
19 problem.

20 PRESIDING COMMISSIONER PERNELL: Okay.
21 Let's move on.

22 INTERVENOR SARVEY: Well, we'd like to
23 respond to that.

24 APPLICANT COUNSEL GRATTAN: Respond to
25 what?

1 INTERVENOR SARVEY: The declaration and
2 his testimony.

3 HEARING OFFICER TOMPKIN: Well, I think
4 we've had an opportunity, we've made our ruling.
5 We'll accept the declaration. He's withdrawn his
6 offer of direct testimony, and that will be the
7 ruling. But your objection will be noted for the
8 record.

9 INTERVENOR SARVEY: I'd just like to
10 point out that I had quite a bit of testimony that
11 wasn't listed on the schedule and has not been
12 seen by quite a few people, maybe through some
13 faults of my own, I don't know exactly what
14 happened. But I just want to object to the fact
15 that my omitted items have not been entered into
16 the record. Thank you.

17 HEARING OFFICER TOMPKIN: Mr. Sarvey, I
18 don't want you to feel that you're being treated
19 any differently, that's not our intent here. If
20 you have submitted some prefiled testimony that we
21 have inadvertently overlooked and you provide us
22 that documentation, we'll certainly look at it and
23 consider it.

24 And I am not infallible, I'll say it
25 right there. I could have overlooked the name,

1 and if you show me the documentation I will stand
2 here with the applicant and we will certainly
3 consider it.

4 INTERVENOR SARVEY: Okay. We would do
5 that after the testimony, then?

6 HEARING OFFICER TOMPKIN: Right.

7 INTERVENOR SARVEY: All right, thank
8 you.

9 HEARING OFFICER TOMPKIN: All right. So
10 then we will go on to staff's witness in this
11 area.

12 STAFF COUNSEL WILLIS: Okay. Once
13 again, staff calls Natasha Nelson, and she'll need
14 to be sworn in.
15 Whereupon,

16 NATASHA NELSON
17 Was called as a witness herein and, after first
18 being duly sworn, was examined and testified as
19 follows:

20 DIRECT EXAMINATION

21 BY STAFF COUNSEL WILLIS:

22 Q Could you please state your name for the
23 record.

24 A Natasha Nelson.

25 Q And was a statement of your

1 qualifications attached to this testimony?

2 A Yes, it was.

3 Q Could you briefly state your education
4 and experience as it pertains to biological
5 resources.

6 A I have a bachelor of science in biology,
7 and I have a master's degree in wildlife science.
8 I've been working in the environmental field for
9 six years, consulting for both government projects
10 as well as private projects. For the last two
11 years, I've been working on Energy Commission
12 projects. I have testimony for the Energy
13 Commission on over ten projects.

14 Q Thank you. Did you prepare the
15 testimony entitled Biological Resources in the
16 staff assessment?

17 A Yes.

18 Q And did you prepare the testimony
19 entitled Biological Resources in the supplement of
20 the staff assessment?

21 A Yes, both.

22 Q And does the supplement wholly replace
23 the testimony in the staff assessment?

24 A Yes, it does.

25 STAFF COUNSEL WILLIS: At this time we'd

1 like to mark the supplemental staff assessment as
2 an exhibit.

3 HEARING OFFICER TOMPKIN: All right.
4 The supplemental staff assessment will be marked
5 as Exhibit 17 for identification.

6 (Thereupon, the above-referenced
7 document was marked as Staff's Exhibit
8 17 for identification.)

9 STAFF COUNSEL WILLIS: Thank you.
10 BY STAFF COUNSEL WILLIS:

11 Q Do you have any changes to your written
12 testimony that you are proposing today?

13 A No.

14 Q And do the opinions contained in your
15 testimony represent your best professional
16 judgment?

17 A Yes.

18 Q Could you please explain how you analyze
19 sensitive species in the project area?

20 A Through a records search at the
21 California and federal listings held in the
22 Natural Diversity Database, 28 plants and 12
23 wildlife species were identified, and that is
24 Table One of my testimony. From there we
25 determined from that list which species were

1 likely to be present on the site. That was
2 narrowed down to San Joaquin kit fox and the
3 western burrowing owl.

4 In December, as noted in previous
5 testimony, the wet season construction plan was
6 submitted to staff. At that time we reviewed
7 whether California tiger salamander and western
8 spade-foot toad would be present on the site. For
9 those two species the answer was negative.

10 Q And could you please describe the
11 project's potential impact to these species.

12 A The primary impact found in biological
13 resources was the permanent and temporary
14 disturbance of open space land. We have permanent
15 disturbance of approximately 12.2 acres, and
16 temporary disturbance of 22.4 acres, for a total
17 of 34.6. That is represented in Table Two of my
18 testimony.

19 The loss of open space is a concern to
20 many of our state's wildlife and plant species,
21 including western burrowing owl and San Joaquin
22 kit fox. In addition, San Joaquin kit fox has
23 been identified as using the Delta Mendota canal
24 and Union Pacific Railroad as migration corridors,
25 according to the San Joaquin Kit Fox Planning and

1 Conservation Team.

2 Q Thank you. In your professional
3 opinion, does the project pose any significant
4 adverse impacts to the environment?

5 A I did identify impacts that were
6 possible to San Joaquin kit fox, western burrowing
7 owl as significant. I did identify a need of
8 mitigation and proposed mitigation be the use of
9 the San Joaquin County multi-species habitat
10 conservation open space plan. The HCP that I just
11 described allows for the conversion of
12 approximately 110,000 acres in the 900,000-acre
13 county, or one-tenth, for urban development,
14 transportation and schools. And we required they
15 compensate one to one for any of the agricultural
16 land lost, which is the ratio in the plan, and
17 that would total 34.6 acres of compensation.

18 In addition, in order to mitigate
19 impacts, we required compliance with the multi-
20 species plan standard recommendations. These
21 would be preconstruction surveys, kit fox
22 education to employees, and inspecting pipes, many
23 of the things identified in Dr. Van Herwig's BMP,
24 biological monitoring plan.

25 We required compliance with the US Fish

1 and Wildlife Service recommendations for San
2 Joaquin kit fox, and we worked closely with the
3 applicant for avoidance of landscaping facilities
4 near the Delta Mendota canal or the Union Pacific
5 Railroad. Areas near Delta Mendota canal will
6 also require a conservation easement if they
7 cannot be more than 300 feet from the canal.

8 Q And briefly, could you please explain
9 what an HCP or habitat conservation plan is, and
10 the role of the California Department of Fish and
11 Game and US Fish and Wildlife Service in your
12 analysis?

13 A Habitat conservation plan or HCP is a
14 mechanism for non-federal projects to gain
15 incidental take of species, a permit for
16 incidental take of species.

17 Now, this HCP was ratified in November
18 of 2000. Both California Department of Fish and
19 Game and US Fish and Wildlife allow any project
20 taking open space in the county to participate,
21 with the approval of the technical advisory
22 committee.

23 California Department of Fish and Game
24 and US Fish and Wildlife Service are part of the
25 technical advisory committee, which voted on

1 October 10th to include this project in the HCP,
2 and, as noted in the record, San Joaquin Council
3 of Governments, Inc., which is a joint power
4 authority of the HCP, voted on October 25th to
5 include it as well.

6 In addition, US Fish and Wildlife
7 Service participated in phone calls and reviewed
8 faxes about the landscaping plan after its release
9 on January 4th, and gave formal comments on
10 January 8th at our staff assessment workshop.

11 Q With the mitigation proposed as part of
12 our conditions of certification, in your
13 professional opinion would the project pose a
14 significant adverse impact to biological
15 resources?

16 A No, but I will add that there would be a
17 designated biologist to do preconstruction
18 monitoring as well as monitoring during
19 construction to clear areas of resources that were
20 in peril from disturbance. Food and pets would
21 also be checked and not allowed, pets are not
22 allowed on the site.

23 And I commend the applicant for the use
24 of native plants in their landscaping.

25 Q And finally, does the proposed project

1 comply with all laws, ordinances, regulations and
2 standards?

3 A Yes, it does.

4 STAFF COUNSEL WILLIS: This witness is
5 available for cross examination.

6 HEARING OFFICER TOMPKIN: Does the
7 applicant wish to question the witness?

8 APPLICANT COUNSEL GRATTAN: Brief cross.

9 HEARING OFFICER TOMPKIN: You may
10 proceed.

11 CROSS EXAMINATION

12 BY APPLICANT COUNSEL GRATTAN:

13 Q In your professional opinion,
14 Ms. Nelson, were the surveys conducted by the
15 applicant in accordance with the standards in the
16 profession?

17 A Yes, they were, both on the site and the
18 buffer areas which are required by our
19 regulations.

20 Q And have they been designed to identify
21 listed species and resources?

22 A They would identify the individual
23 species, as well as habitat that may be present,
24 and only habitat was found.

25 Q Thank you. And next, with regard to the

1 wet weather plan, you did review both the letter
2 from Dr. Jennings on the 25th of December and the
3 report submitted on the 28th of December.

4 A Yes, I had, all documents from
5 Dr. Jennings regarding California tiger
6 salamanders --

7 Q And did I hear your conclusions with
8 regard to those listed amphibians that the wet
9 weather plan would not impact those amphibians or
10 habitat?

11 A Yes, the results were negative for both.

12 Q Thank you, and one other question. The
13 draft biological monitoring and mitigation plan,
14 was that submitted by the applicant and part of
15 the public record and was processed?

16 A Yes, the draft is an appendix to the
17 original AFC.

18 Q And to your knowledge, have you received
19 any public comments on this document?

20 A I have not.

21 Q And can you remember how long this has
22 been available to the public for review?

23 A August 2001.

24 Q Thanks.

25 APPLICANT COUNSEL GRATTAN: No further

1 questions.

2 HEARING OFFICER TOMPKIN: Any questions
3 from intervenors?

4 INTERVENOR SARVEY: Yeah.

5 CROSS EXAMINATION

6 BY INTERVENOR SARVEY:

7 Q Could you describe your visit to the
8 site, how long you were there, what time of year
9 it was, and the length of time you spent there?

10 A I was there in December with another
11 biologist. We walked along the edge of the canal,
12 the railroad, and on the site. We were there for
13 approximately two hours.

14 Q Would it be reasonable to expect to see
15 other listed species at another time of year other
16 than December?

17 A Well, the most obvious is our migratory
18 birds which would come into the area in the
19 spring, or be migrating the opposite direction in
20 the fall, they would be more active during those
21 times than during December.

22 Q But was there any followup examination
23 of the site after December?

24 A What we found on site was common habitat
25 that is not attractive to sensitive species for

1 any special reason, so we did not do a followup
2 survey.

3 Q But there is a possibility that we would
4 perhaps see some migratory birds or something of
5 that nature at another time during the year?

6 A Wide-ranging species, migratory species
7 could be found on the site. I'll note for the
8 record that we always look for western burrowing
9 owl prior to construction because they do travel.

10 Q Could you describe to me again what key
11 documents you did your search to arrive at your
12 opinion?

13 A I do have the AFC as a beginning point.
14 I have my own version of California, CNDDDB,
15 California -- How come I can't think of it --
16 Natural Diversity Database, which I queried. I
17 have office files. I would classify that I have
18 articles from scientific journals on air quality,
19 noise, light, and I also have general descriptions
20 of animals' habitat needs and ranges, and more
21 common books that you would find in a biologist's
22 library. Those were all consulted to review this
23 project.

24 Q Would your analysis be hampered if the
25 key documents you relied on arrived in piecemeal

1 fashion?

2 A I'm actually very good at bringing good
3 a whole bunch of diverse factions into a cohesive
4 document, so it would not matter time or whether
5 they were even in French.

6 Q Did the expedited nature of the
7 application hamper your analysis in any way?

8 A No, I thought it was a very
9 straightforward application and it was easy to
10 review.

11 Q Have you seen the applicant's BRMIMP?

12 A I have seen the draft, but prior to
13 construction I would also expect to see a final
14 which would incorporate any of the measures that
15 were adopted by the committee as conditions of
16 certification.

17 Q And can you describe to me what sort of
18 notice was given to the public to allow input on
19 this document?

20 APPLICANT COUNSEL GRATTAN: Question,
21 objection here; that was asked and answered.

22 INTERVENOR SARVEY: I just asked for a
23 description of how the public was noticed to
24 comment on this document.

25 APPLICANT COUNSEL GRATTAN: I believe I

1 asked that question and I believe the witness
2 answered it.

3 STAFF COUNSEL WILLIS: Well, and just
4 from staff's perspective we would object that this
5 witness is not the witness that would have
6 notified the public. She's the biologist that did
7 the technical analysis.

8 INTERVENOR SARVEY: Sorry, Mr. Grattan.

9 HEARING OFFICER TOMPKIN: I'll sustain
10 that objection.

11 BY INTERVENOR SARVEY:

12 Q Does the SJSP plan for impacts involving
13 projects like the Tracy peaker project?

14 A As I said before, they have very broad
15 categories: utilities, residential. Mostly this
16 is in what is classified as an urban development
17 zone. Anything that would be classified as urban
18 would be allowed in this zone.

19 Q And does any of the analysis that you
20 did include the disruption to wildlife due to
21 noise for the lighting at the site?

22 A I read the other sections, including
23 air, noise and visual, which is what would cover
24 light. I determined that that would not be an
25 issue here. Noise and light from the analysis were

1 so small as to be inconsequential to wildlife off
2 the site.

3 In addition, no sensitive habitat or
4 sensitive species were identified in the surveys
5 so that I would have a receiving end.

6 Q Have you had an opportunity to look at
7 Dr. Smallwood's report?

8 A It arrived this morning and I only had a
9 cursory glance at it.

10 Q Is it possible that staff might have
11 missed any special status species in their
12 analysis?

13 A I'll refer to what I said in my
14 testimony, that we have a broad umbrella species
15 known as San Joaquin kit fox. This species is
16 interrupted by the loss of open space in San
17 Joaquin County, and I tried to cover raptor use of
18 the site on page 13 when I said, "Raptors, such as
19 barn owls and great horned owls, are likely to
20 forage on or near the site and may perch, but the
21 permitted loss of 12.2 acres is unlikely to cause
22 a significant loss to these wide-ranging species."

23 So I do, in general terms, cover species
24 that may not have been physically seen by myself
25 or a biologist that the applicant had hired.

1 Q When doing your cumulative impact
2 analysis, what radius around the plant do you use
3 to arrive at your conclusions?

4 A I actually look at more -- It might be
5 different for every area, a watershed, you know,
6 since level of -- if other projects would be using
7 the same resources, such as the same canal, or be
8 using -- I think that's the best example, I'll
9 stay with that one. And then look at the air
10 quality that could accumulate together to cause an
11 impact to species within a zone.

12 Air quality has preset at six miles is
13 the distance that is used for analysis.

14 Q Would you feel that an analysis would be
15 more representative of the measure of TP emissions
16 on special status species if the entire air basin
17 was included or maybe a larger area than the six-
18 mile radius?

19 A No, because the simulations I've seen,
20 I've seen dramatic dropoffs of any pollutants that
21 are of harm basically at the fence line of the
22 power plant itself. They do not typically go very
23 far beyond that, unless you had a significant wind
24 pattern, or a sensitive resource would also have
25 to be identified to receive those emissions. And

1 that is not true in this valley.

2 Q The applicant has described the maximum
3 point of deposition from this plant in I believe
4 it's the southwest area in the hills. The
5 elevation, I think it -- I believe it was like 130
6 or 150 feet above the valley floor.

7 A I don't understand what pollutant you're
8 speaking of.

9 Q Well, they determined that the maximum
10 amount of pollutant emissions concentrations would
11 occur in an area above the valley floor, and what
12 I'm asking is was that area analyzed in your
13 analysis of biological resources?

14 A No.

15 Q Is it possible that that would be an
16 area that red-legged frog could inhabit?

17 A Again, I would say that you have to
18 identify a species that is sensitive to nitrogen,
19 because that is the main product that would go the
20 farthest, and red-legged frog is not a species --
21 I don't have enough background to tell you exactly
22 what their tolerances are, but are you asking
23 about the red-legged frog habitat or the red-
24 legged frog in itself as an individual or its
25 eggs?

1 Q The habitat itself, and also the fact
2 that I believe -- Well, I shouldn't say that, I'm
3 not an expert. But articles that I've read
4 indicate that NOx are very detrimental to the
5 health of the red-legged frog.

6 PRESIDING COMMISSIONER PERNELL: Is that
7 a question?

8 INTERVENOR SARVEY: Yes.

9 PRESIDING COMMISSIONER PERNELL: Restate
10 it, please.

11 INTERVENOR SARVEY: I'll pass over to
12 the next one, Mr. Pernell.

13 BY INTERVENOR SARVEY:

14 Q Did the analysis of the cumulative
15 biological resource impacts include the Thermal
16 Energy Development Corporation and Owens Brockway,
17 who regularly emits nitrogen oxides of over 500
18 tons per year?

19 A In cumulative impacts, I looked at what
20 could be added, and I looked at East Altamonte and
21 Florida Power and Light Tesla power plant project
22 as adding to the same air basin. I did not
23 analyze what is currently baseline.

24 INTERVENOR SARVEY: Thank you, Natasha.

25 HEARING OFFICER TOMPKIN: Anything

1 further for this witness? Ms. Willis?

2 STAFF COUNSEL WILLIS: At this time
3 staff would like to enter the Biological Resources
4 section of the staff assessment. I believe we
5 just want to enter in the supplemental staff
6 assessment Biological Resources section that's
7 been previously marked as Exhibit 17.

8 HEARING OFFICER TOMPKIN: Any objection
9 from any party? Hearing no objection, the
10 Biological Resources section of the supplemental
11 staff assessment will be admitted in evidence.

12 (Thereupon, the above-referenced document,
13 marked as Staff's Exhibit 17 for
14 identification, was received into evidence.)

15 STAFF COUNSEL WILLIS: Ms. Tompkin, we
16 also believe we do have the minutes, the exact
17 minutes from the Thursday, October 25th, 2001 San
18 Joaquin Council of Governments Board of Directors
19 meeting. If anybody would like, we can enter that
20 as evidence as well, or we can wait for the
21 applicant to do it at a later date.

22 APPLICANT COUNSEL GRATTAN: The
23 applicant would request that it be entered as
24 evidence.

25 HEARING OFFICER TOMPKIN: Why don't you

1 provide a copy of that to Ms. Sundberg.

2 INTERVENOR SARVEY: Is that the same as
3 the Joint Powers Authority?

4 THE WITNESS: Just for clarification,
5 because it is confusing, San Joaquin Council of
6 Governments is a public entity. San Joaquin
7 Council of Governments, Inc., is a joint power
8 authority for the HCP.

9 UNIDENTIFIED MALE SPEAKER: So which
10 minutes are they?

11 THE WITNESS: These minutes begin --

12 PRESIDING COMMISSIONER PERNELL: No, no,
13 no, no.

14 INTERVENOR SARVEY: No, you can't ask
15 that question.

16 UNIDENTIFIED MALE SPEAKER: Sorry.

17 INTERVENOR SARVEY: Exhibit Number Three
18 on my exhibit list I would like to have permission
19 to submit.

20 HEARING OFFICER TOMPKIN: Why don't we
21 wait one minute while Ms. Sundberg reviews that,
22 and I'll take Mr. Sarvey's exhibit, and let's --
23 we'll go off the record briefly.

24 (Thereupon, a recess was held
25 off the record.)

1 HEARING OFFICER TOMPKIN: Okay. We're
2 back on the record. Ms. Sundberg, is the document
3 that staff provided acceptable?

4 INTERVENOR SUNDBERG: Yes.

5 HEARING OFFICER TOMPKIN: Then that
6 document will be substituted as the original of
7 Exhibit 16, and there being no other objection,
8 Exhibit 16 as substituted will be admitted in
9 evidence.

10 (Thereupon, the substituted above-referenced
11 document, marked as Staff's Exhibit 16 for
12 identification, was received into evidence.)

13 INTERVENOR SARVEY: Can I request that a
14 copy of that be mailed to me, please?

15 HEARING OFFICER TOMPKIN: All right.

16 PUBLIC ADVISER MENDONCA: Want me to
17 make some copies?

18 HEARING OFFICER TOMPKIN: That would be
19 wonderful. Thank you, Ms. Mendonca.

20 Mr. Sarvey, you had indicated you wanted
21 to offer a document?

22 INTERVENOR SARVEY: Yes.

23 HEARING OFFICER TOMPKIN: Okay. This
24 was identified as Exhibit Three on your tentative
25 exhibit list of Biological Display with Report.

1 Has that been provided to the other parties?

2 INTERVENOR SARVEY: No, the report
3 hasn't, but --

4 HEARING OFFICER TOMPKIN: Can you please
5 step to the microphone? I'm sorry.

6 INTERVENOR SARVEY: No, I haven't
7 presented the board, but they have received the
8 report, and I've already entered the pictures but
9 I don't think they've been received as evidence at
10 this point.

11 STAFF COUNSEL WILLIS: Well, we would
12 object to something that we haven't seen being
13 entered at this point in time without any
14 foundation laid.

15 INTERVENOR SARVEY: Yeah, the report
16 itself has been docketed.

17 STAFF COUNSEL WILLIS: I don't believe
18 that docketing the report is the same as laying
19 the foundation for that report to come in as
20 evidence, and that would be the foundation for our
21 objection.

22 INTERVENOR SARVEY: I docketed it as
23 evidence.

24 HEARING OFFICER TOMPKIN: Well, but
25 docketing simply means that you have provided that

1 as part of the public record. It's not evidence;
2 that's why we're having these proceedings. And in
3 order to lay a foundation, you have to give the
4 other side an opportunity to review your proposed
5 evidence and make available someone who can
6 explain the source of that evidence, the basis for
7 the determinations. They have to have an
8 opportunity to essentially challenge and probe the
9 validity of the document.

10 And I believe that that's the basis for
11 Ms. Willis's objection.

12 STAFF COUNSEL WILLIS: That's correct.

13 INTERVENOR SARVEY: Okay. Well, I would
14 just like to point out that I listed Dr. Smallwood
15 in my prehearing conference statement, I listed
16 him in my written testimony which hasn't been
17 recognized, and now I'm being denied to submit my
18 exhibit which I object to. Thank you.

19 HEARING OFFICER TOMPKIN: Well,
20 Mr. Sarvey, once again, I indicate to you that if
21 you can show us that document, we will consider
22 that testimony, but you have -- and you've stated
23 that, but nothing has been provided to this
24 committee to illuminate our knowledge.

25 We'll go off the record a moment.

1 (Thereupon, a recess was held
2 off the record.)

3 PRESIDING COMMISSIONER PERNELL: We're
4 going to begin. Okay, we only have two sections
5 left that we're going to cover this evening, so we
6 want to get started.

7 HEARING OFFICER TOMPKIN: Mr. Sarvey has
8 shown me the document that was filed, he filed on
9 February 13th, 2002, which he has characterized as
10 his written testimony. It was docketed, I do have
11 a docket number on it, and what I'm going to do is
12 go ahead and mark that document as Exhibit 18 at
13 this time.

14 INTERVENOR SARVEY: Thank you.

15 (Thereupon, the above-referenced
16 document was marked as Staff's
17 Exhibit 18 for identification.)

18 HEARING OFFICER TOMPKIN: And, after
19 consultation, it's the preference of the committee
20 to request a stipulation to admission of this
21 Exhibit 18 testimony, subject to hearsay or other
22 objections of particular parts of testimony
23 contained in the document.

24 APPLICANT COUNSEL GRATTAN: Can we see
25 the document?

1 HEARING OFFICER TOMPKIN: Sure. We'll
2 go off the record briefly.

3 (Thereupon, a recess was held
4 off the record.)

5 HEARING OFFICER TOMPKIN: We're back on
6 the record.

7 APPLICANT COUNSEL GRATTAN: The
8 applicant has no objection to admitting this as an
9 exhibit. It's sort of let's say not usual to have
10 an exhibit admitted without testimony to which it
11 adheres. We're also willing to admit it as
12 limited testimony, again, as you pointed out,
13 subject to hearsay objections, and also we'd like
14 to reserve the right to cross examine on it, if
15 necessary and deemed appropriate.

16 And finally, we're willing to admit
17 this, but we're not willing to endorse its
18 probative value.

19 HEARING OFFICER TOMPKIN: Well, the
20 committee recognizes that the document does
21 contain hearsay, and that will go to the weight
22 that will be accorded to the document.

23 Staff, did you wish to comment? Do you
24 have any objection?

25 STAFF COUNSEL WILLIS: We don't have an

1 objection to it being entered under the conditions
2 that it's being entered. We would also like to
3 reserve the right to cross examine if, for some
4 reason, this information is presented at another
5 date, another time.

6 HEARING OFFICER TOMPKIN: All right.
7 Then hearing no objection, Exhibit 18,
8 Mr. Sarvey's testimony, will be admitted subject
9 to the hearsay objections and limitations previous
10 noted.

11 (Thereupon, the above-referenced document,
12 marked as Staff's Exhibit 18 for
13 identification, was received into evidence.)

14 HEARING OFFICER TOMPKIN: Do we have
15 anything further for this witness, Ms. Willis?

16 STAFF COUNSEL WILLIS: No, we don't.

17 HEARING OFFICER TOMPKIN: Thank you,
18 Ms. Nelson.

19 (Thereupon, the witness was
20 excused from the stand.)

21 HEARING OFFICER TOMPKIN: Do we have any
22 other witnesses in this area of Biological
23 Resources?

24 STAFF COUNSEL WILLIS: No.

25 HEARING OFFICER TOMPKIN: All right.

1 Then -- Oh, Mr. Sarvey?

2 INTERVENOR SARVEY: Would the exhibit be
3 allowed?

4 HEARING OFFICER TOMPKIN: No one has
5 seen that board, so I'm going to sustain the
6 objection to that exhibit.

7 INTERVENOR SARVEY: Thank you.

8 HEARING OFFICER TOMPKIN: We'll move on
9 to the next section, then, and that is Soil and
10 Water Resources. The applicant may call his first
11 witness.

12 APPLICANT COUNSEL GRATTAN: Yes, we're
13 calling Dr. Carnachan.

14 HEARING OFFICER TOMPKIN: We'll ask the
15 reporter to swear in the witness at this time.
16 Whereupon,

17 ROBERT CARNACHAN
18 Was called as a witness herein and, after first
19 being duly sworn, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY APPLICANT COUNSEL GRATTAN:

23 Q For the record, could you give us your
24 name, address and current employment.

25 A Yes. My name is Robert Carnachan. I am

1 employed by URS Corporation. Address is 500 12th
2 Street, Suite 200, in Oakland, California.

3 Q And could you -- I know you've
4 previously submitted your resume and
5 qualifications. Could you briefly outline your
6 qualifications and could you also tell us the
7 section of the AFC that you are sponsoring in
8 testimony, that you prepared.

9 A Yes. I prepared the Water Resources
10 section of the AFC. I have a bachelor's degree,
11 actually two bachelor's degrees -- one in
12 environmental studies, one in geography -- and I
13 have a master of science in water resources
14 management, and about 13 years of experience in
15 environmental analysis, surface water management,
16 and pollution control.

17 Q Thank you. And are you sponsoring any
18 exhibits currently to this hearing?

19 A Yes, I am. I am sponsoring Section 814
20 of the original AFC document dated August 2001. I
21 am also sponsoring Sections 814 and 312 of the
22 supplemental AFC document dated October 2001, as
23 well as the wet weather contingency plan dated
24 September 10th, 2001, as well as Data Responses 68
25 through 81 and the relevant attachments to those

1 responses.

2 Q And, excuse me, and you've previously
3 submitted testimony in this case.

4 A Yes, I have.

5 Q And are you prepared to affirm that
6 testimony under oath here?

7 A Yes, I am.

8 Q Do you have any additions or corrections
9 to that testimony?

10 A One minor correction. It states that I
11 analyze the impacts on water resources and soils,
12 I actually only analyzed the impacts on water
13 resources. Soils was done by somebody else.

14 Q Could you summarize your testimony,
15 please.

16 A Yes. I analyzed the impacts of the
17 Tracy peaker project on surface water and
18 groundwater resources, as well as surface water
19 and groundwater supplies. I also evaluated the
20 stormwater impacts of the project.

21 To summarize, the Tracy peaker project
22 will require up to approximately 30 acrefeet per
23 year of water supply at the maximum level of
24 operation that's specified in the AFC. This water
25 would be used for evaporative cooling. In my

1 analysis I reviewed the potential for curtailment
2 of this water supply, either due to drought or for
3 other types of reasons, with appropriate backup
4 water supply. I concluded that the Tracy peaker
5 project would have sufficient water supply to
6 service the plant.

7 Waste disposal at the Tracy peaker plant
8 would utilize essentially a zero liquid discharge
9 system, and in addition, all non-contact
10 stormwater would be contained on site in an
11 evaporation and percolation basin.

12 Q Now, just a few questions. You stated
13 the plant would use 30 acrefeet of water annually.
14 Can you tell us how many acrefeet of water a
15 normal household in California uses annually?

16 A Well, there are a number of estimates,
17 but based on the standard that I have seen used
18 for Northern California, approximately a household
19 of four would use about one acrefoot of water a
20 year. So essentially, you're looking at 30
21 households.

22 Q Thank you. Now, I want to ask you, have
23 you had an opportunity to review Mr. Pinhey's
24 testimony from the City of Tracy with respect to
25 GWF's water use and with respect to potential

1 emergency curtailment and the issue of using
2 groundwater as backup if there is an emergency
3 curtailment.

4 A Yes, I have.

5 Q Could you enlighten us as to your
6 analysis and conclusions with respect to that
7 testimony? I think you're going to have to
8 summarize briefly what that testimony says to you.

9 A The testimony that you referred to, and
10 I will just briefly summarize here, states that
11 the assessment does not address the allocation,
12 the Biomass plant, Tracy Biomass plant allocation,
13 which is the identified backup water supply for
14 the Tracy peaker project, and the consequent
15 availability of that allocation in the event of a
16 curtailment.

17 And it also states that the staff
18 assessment does not address emergency curtailments
19 of all water deliveries from the Delta Mendota
20 canal. For the Tracy peaker project, the
21 statement is made that a curtailment of surface
22 water, if it were to occur, the Tracy peaker
23 project would need to utilize groundwater, or may
24 need to utilize groundwater supplies from the
25 Biomass plant.

1 In the testimony that's been provided,
2 as well as in the staff assessment, this is
3 addressed. Water curtailment from an emergency
4 type of situation would likely be short termed in
5 its impact. The Tracy peaker plant currently has
6 access to 136 acrefeet per year of water. The
7 plant's requirements, as I stated earlier, are
8 significantly less than that. And so we feel that
9 there is adequate supply available in the event of
10 a curtailment due to drought.

11 In the event of an emergency curtailment
12 that would shut off all water supply directly from
13 the Delta Mendota canal, we feel that the plant
14 would access any unused allocation from the Tracy
15 Biomass generating plant, or simply would have to,
16 in an emergency, curtail production to the point
17 where evaporative cooling water is not necessary.
18 Again, this would be a very short-term,
19 anticipated to be a very short-term interruption
20 in service.

21 Q That's all the questions we have right
22 now.

23 APPLICANT COUNSEL GRATTAN: The witness
24 is available for cross examination.

25 HEARING OFFICER TOMPKIN: Does the staff

1 wish to question this witness?

2 STAFF COUNSEL WILLIS: No, we don't.

3 HEARING OFFICER TOMPKIN: Is there any
4 intervenor that has questions for this witness?

5 Mr. Pinhey?

6 INTERVENOR PINHEY: Thank you. Nicholas
7 Pinhey, City of Tracy.

8 CROSS EXAMINATION

9 BY INTERVENOR PINHEY:

10 Q For clarification, the statement was
11 made that you would utilize allocation for the
12 Biomass plant in a surface water curtailment.
13 Does the Biomass plant currently utilize surface
14 water for its cooling production?

15 A Yes.

16 INTERVENOR PINHEY: Okay.

17 APPLICANT COUNSEL GRATTAN: Do you know?

18 THE WITNESS: Yes. My understanding is
19 yes, based on the information that I reviewed,
20 yes.

21 BY INTERVENOR PINHEY:

22 Q So in a catastrophic failure of the
23 surface water delivery system, similar to the
24 failure of the state water project last year, what
25 would be the fallback? Would it be the shutdown

1 of the Tracy peaker facility, or is there an
2 alternative supply source?

3 A I don't know of an alternative supply
4 source.

5 INTERVENOR PINHEY: Thank you.

6 HEARING OFFICER TOMPKIN: Do we have any
7 other questions for this witness?

8 Mr. Grattan?

9 APPLICANT COUNSEL GRATTAN: May I have a
10 moment off the record? I think there's something
11 I'd like to correct.

12 HEARING OFFICER TOMPKIN: You may.
13 We'll go off the record briefly.

14 (Thereupon, a recess was held
15 off the record.)

16 HEARING OFFICER TOMPKIN: We're back on
17 the record.

18 APPLICANT COUNSEL GRATTAN: I would like
19 the record to show that Mr. Carnachan has had the
20 opportunity to consult with Mr. Wheeler off the
21 record. Mr. Wheeler has some operational
22 responsibilities, is aware of the operations of
23 the Tracy peaker plant, and maybe I can
24 rephrase -- excuse me, the Tracy Biomass plant,
25 and maybe I can rephrase or repeat Mr. Pinhey's

1 question.

2 REDIRECT EXAMINATION

3 BY APPLICANT COUNSEL GRATTAN:

4 Q Can you tell us what the source of the
5 Tracy Biomass plant's water is, and what it would
6 use in case of curtailment?

7 A The Tracy Biomass plant, as I was
8 reminded, uses groundwater wells as the source of
9 its water supply. In the event of curtailment,
10 well, groundwater wells would not be subject to an
11 emergency curtailment of any water from the -- of
12 any supply from the canal.

13 Q And are you aware of the fact that the
14 Tracy Biomass plant also has a surface water
15 allocation?

16 A Yes.

17 Q And is it your understanding, based upon
18 the application, that GWF has stated that it would
19 use the Tracy Biomass plant's surface water
20 allocation?

21 A Yes, as a backup supply.

22 Q And again, you have read your -- you
23 have read the City of Tracy's concerns with the
24 fact that perhaps 30 acrefeet of GWF pumping
25 groundwater, in case of an emergency curtailment

1 of the Delta Mendota canal, that that would have a
2 significant or potential impact on Tracy's
3 groundwater supplies.

4 Given that concern, if GWF were to
5 accept a condition from this Commission that it
6 not pump or cause groundwater to be pumped in any
7 case, including emergency curtailment, do you
8 believe that that would resolve any concerns about
9 depleting the City of Tracy's groundwater supply
10 by use of occasional use of groundwater?

11 A Yes, I do.

12 Q Thank you.

13 UNIDENTIFIED MALE SPEAKER: As a member
14 of the audience, I'm confused as to who the
15 witness is. It seems like the gentleman on the
16 right is the --

17 HEARING OFFICER TOMPKIN: Okay, well --

18 UNIDENTIFIED MALE SPEAKER: I'm sorry?

19 HEARING OFFICER TOMPKIN: If you'd like
20 us to identify the witness, we will reidentify the
21 witness. He was previously identified.

22 Would you restate your name for the
23 record.

24 UNIDENTIFIED MALE SPEAKER: Excuse me,
25 can I make the rest of the statement?

1 HEARING OFFICER TOMPKIN: Well,
2 actually, no, we're not entertaining comments from
3 the audience at this time.

4 UNIDENTIFIED MALE SPEAKER: Okay, I'll
5 do it later.

6 THE WITNESS: Yes. My name is Rob
7 Carnachan with URS.

8 HEARING OFFICER TOMPKIN: Thank you.

9 Do we have any additional questions from
10 the parties?

11 Mr. Sarvey?

12 INTERVENOR SARVEY: Yes.

13 Pardon me if you already answered this,
14 but I didn't quite understand what was going on.

15 CROSS EXAMINATION

16 BY INTERVENOR SARVEY:

17 Q Do you intend to use any well water as a
18 backup source on the GWF site?

19 A No.

20 Q And what is your per-acre allotment for
21 water at that site from the Plain View Water
22 District?

23 A Let me check on the per-acre number.

24 APPLICANT COUNSEL GRATTAN: While he's
25 checking it, if I might raise maybe a way of -- I

1 know where you're going, Mr. Sarvey, because I
2 read your data request and we did respond to that
3 data request. Mr. Wheeler, however, did respond
4 to it and I think Mr. Wheeler has more intimate
5 knowledge of GWF's allocation and how it would use
6 that allocation.

7 INTERVENOR SARVEY: No objection.

8 APPLICANT COUNSEL GRATTAN: And we'd be
9 pleased to put him on there --

10 INTERVENOR SARVEY: No objection.

11 APPLICANT COUNSEL GRATTAN: -- to answer
12 that question.

13 INTERVENOR SARVEY: No objection.

14 APPLICANT COUNSEL GRATTAN: Would you
15 like to continue your cross examination of
16 Mr. Carnachan and then we'll put him on to answer
17 that question at the end?

18 INTERVENOR SARVEY: Oh, to answer that
19 question at the end, well, it's probably he's
20 going to have to answer the rest of the question,
21 so maybe this witness is --

22 APPLICANT COUNSEL GRATTAN: Go ahead.

23 INTERVENOR SARVEY: No, no, Mr. Wheeler
24 is probably going to have to answer the rest of
25 these questions.

1 HEARING OFFICER TOMPKIN: Are you done
2 with that witness?

3 INTERVENOR SARVEY: As long as I get to
4 cross examine Mr. Wheeler, yes.

5 HEARING OFFICER TOMPKIN: Is there any
6 objection from staff or any other party?

7 All right, we will permit that. Are we
8 done with the testimony of Mr. Carnachan, then?

9 INTERVENOR SARVEY: Thank you,
10 Mr. Carnachan.

11 HEARING OFFICER TOMPKIN: All right.

12 APPLICANT COUNSEL GRATTAN: Could we
13 move his testimony into evidence?

14 HEARING OFFICER TOMPKIN: All right.
15 We'll do that before he steps down.

16 APPLICANT COUNSEL GRATTAN: Mr. Wheeler,
17 your turn at the bow.

18 APPLICANT COUNSEL KARP: Before
19 Mr. Carnachan steps down, we'd like to get the
20 exhibits that he sponsored admitted into evidence.
21 He sponsored Section 8 --

22 PRESIDING COMMISSIONER PERNELL: I'm
23 sorry, we're going to need your name for the
24 record if you're going to --

25 APPLICANT COUNSEL KARP: I'm sorry,

1 Irwin Karp. He's sponsoring Section 8.14 of the
2 original application, August 2001. That is
3 already designated as Exhibit One. Also
4 sponsoring Sections 8.14 and 3.12 of the
5 supplement dated October 2001. That is already
6 entered as Exhibit Two. He's also sponsoring the
7 wet weather contingency plan December 10th, 2001.
8 That is already in the record as Exhibit 12.

9 Now, new exhibits. I believe the next
10 number is 19, Madam Hearing Officer?

11 HEARING OFFICER TOMPKIN: Yes.

12 APPLICANT COUNSEL KARP: Exhibit 19
13 would be Data Responses 68 to 81 and the
14 attachment.

15 (Thereupon, the above-referenced
16 document was marked as Staff's Exhibit
17 19 for identification.)

18 APPLICANT COUNSEL KARP: Exhibit Number
19 20, which is Applicant's Exhibit Number 28, the
20 will-serve letter from Plain View Water District,
21 July 31st, 2001. Again, that's Number 28 on our
22 list, it will be Exhibit 20 in the proceedings.

23 (Thereupon, the above-referenced
24 document was marked as Staff's
25 Exhibit 20 for identification.)

1 APPLICANT COUNSEL KARP: And lastly,
2 Mr. Carnachan sponsored exhibits, the site option
3 agreement dated July 10th, 2001. That's Number 29
4 on the applicant exhibit list. It would be new
5 Exhibit 21.

6 (Thereupon, the above-referenced
7 document was marked as Staff's
8 Exhibit 21 for identification.)

9 HEARING OFFICER TOMPKIN: All right.
10 Then the data responses 68 through 81
11 and attachments will be marked for identification
12 as Exhibit 19, the will-serve letter indicated by
13 counsel will be marked as Exhibit 20 for
14 identification, and the site option document will
15 be marked as Exhibit 21.

16 Is there any objection to admission of
17 any of these documents by the parties?

18 Hearing no objection, Exhibits 19, 20
19 and 21 will be admitted in evidence.

20 (Thereupon, the above-referenced documents,
21 marked as Staff's Exhibits 19-21 for
22 identification, were received into evidence.)

23 HEARING OFFICER TOMPKIN: Thank you.
24 The witness may step down.

25 THE WITNESS: Thank you.

1 (Thereupon, the witness was
2 excused from the stand.)

3 HEARING OFFICER TOMPKIN: And I'll ask
4 Mr. Wheeler to come forward.

5 Whereupon,

6 DOUGLAS WHEELER

7 Was called as a previously duly sworn witness
8 herein and was examined and testified as follows:

9 HEARING OFFICER TOMPKIN: Mr. Wheeler, I
10 remind you that you have been previously sworn and
11 that you are still under oath.

12 APPLICANT COUNSEL GRATTAN: Mr. Wheeler
13 is available to you for cross examination,
14 Mr. Sarvey.

15 INTERVENOR SARVEY: Thank you,
16 Mr. Grattan.

17 CROSS EXAMINATION

18 BY INTERVENOR SARVEY:

19 Q What is your per-acre allocation from
20 the Plain View Water District for the site?

21 A 3.4 acrefeet per acre.

22 Q And for a total of how many acrefeet?

23 A The total allocation, CVP allocation on
24 the 40 acres is 136 acrefeet, approximately.

25 Q And you utilized only 10.4 acres of the

1 site; is that correct? Of the 40-acre site?

2 A Is the question is the project site
3 occupying 10.3 acres of the 40-acre parcel?

4 Q Correct.

5 A That's correct, yes.

6 Q But you get the full allocation for the
7 40 acres; is that correct?

8 A Pursuant to the terms of the contract
9 between the Plain View Water District and the US
10 Bureau of Reclamation, the entire 136 acrefeet
11 will be converted from ag to M&I and made
12 available for the use on the project site of 10.3
13 acres.

14 Q And in your allocation to the Farmland
15 Trust, how many acres was it that you allocated,
16 in terms of this particular parcel?

17 A The contribution was 10.3 acres.

18 Q You did not allocate the whole 40 acres,
19 even though you will receive the full water
20 allocation?

21 A The easement or the mitigation from the
22 American Farmland Trust to compensate for the loss
23 of prime farmland is to provide funding for the
24 acquisition of easements at locations other than
25 the site.

1 Q Was any land allocated to the Farmland
2 Trust in terms of the peripheral water from the
3 Delta Mendota canal?

4 A Are you referring to water that would
5 have been allocated to the remaining 30 acres,
6 plus or minus?

7 Q No, actually I was referring to your
8 peripheral pipeline along the canal itself.

9 A The 10.3 acres includes the -- Could you
10 repeat your question, Mr. Sarvey?

11 Q I was questioning about the peripheral
12 pipeline that you have from the canal to the
13 actual plant itself. Are there any areas or any
14 amount of acreage that is donated to the Farmland
15 Trust to cover that expanse, that area that you're
16 going to be utilizing there?

17 A The linear for the 1,470-foot water
18 pipeline is a temporary disturbance, it's not
19 considered a permanent loss of farmland.

20 Q So you will be receiving the full
21 allotment of water but only utilizing 10.4 acres,
22 and only contributing to the Farmland Trust 10.4
23 acres, that's correct?

24 A 10.3 acres I believe is the correct
25 acreage.

1 Q 10.3?

2 A And the entire 136 acrefeet will be made
3 available to the 10.3-acre site.

4 Q Okay.

5 INTERVENOR SARVEY: Thank you,
6 Mr. Wheeler.

7 HEARING OFFICER TOMPKIN: Anything
8 further for this witness?

9 If nothing further for this witness, you
10 may step down. Thank you.

11 (Thereupon, the witness was
12 excused from the stand.)

13 HEARING OFFICER TOMPKIN: All right.
14 Mr. Grattan?

15 APPLICANT COUNSEL GRATTAN: At this
16 point, since we have bifurcated testimony on soils
17 and water, I would like -- and since we have no
18 controversy on the soils portion, none has been
19 registered by staff or the intervenor, I would
20 like to move to enter the soil portion of the
21 testimony, that of Angela Low --

22 STAFF COUNSEL WILLIS: Jennifer.

23 APPLICANT COUNSEL GRATTAN: -- Jennifer
24 Low, excuse me, I'd like to move that in by
25 declaration.

1 HEARING OFFICER TOMPKIN: Any objection
2 from any party?

3 STAFF COUNSEL WILLIS: None.

4 HEARING OFFICER TOMPKIN: Hearing no
5 objection, the declaration of Jennifer Low will be
6 moved in as evidence.

7 (Thereupon, the above-referenced
8 declaration was received into evidence.)

9 APPLICANT COUNSEL GRATTAN: Thank you
10 all very much.

11 We would like to move the testimony of
12 Mr. Carnachan into the record, and we would like
13 to move the exhibits he's sponsored.

14 APPLICANT COUNSEL KARP: We already did
15 that.

16 APPLICANT COUNSEL GRATTAN: Okay, we did
17 that.

18 HEARING OFFICER TOMPKIN: Yes, I believe
19 we have done that.

20 APPLICANT COUNSEL GRATTAN: Okay.

21 HEARING OFFICER TOMPKIN: All right. At
22 this time we'll give staff an opportunity to call
23 its witness.

24 STAFF COUNSEL WILLIS: Thank you. Staff
25 calls Richard Latteri. We'll ask the reporter to

1 swear in the witness at this time.

2 Whereupon,

3 RICHARD LATTERI

4 Was called as a witness herein and, after first
5 being duly sworn, was examined and testified as
6 follows:

7 STAFF COUNSEL WILLIS: Could we go off
8 the record for one second?

9 PRESIDING COMMISSIONER PERNELL: We're
10 off the record for a minute.

11 (Thereupon, a recess was held
12 off the record.)

13 PRESIDING COMMISSIONER PERNELL: Okay.

14 STAFF COUNSEL WILLIS: Are we ready?

15 HEARING OFFICER TOMPKIN: We're back on
16 the record.

17 STAFF COUNSEL WILLIS: Thank you.

18 DIRECT EXAMINATION

19 BY STAFF COUNSEL WILLIS:

20 Q Could you please state your name for the
21 record.

22 A Richard Latteri.

23 Q And was the statement of your
24 qualifications attached to your testimony?

25 A Yes.

1 Q And could you briefly state your
2 education and experience as it pertains to soil
3 and water resources.

4 A I have a bachelor's of science in civil
5 engineering. I have over 20 years of experience
6 with the Department of Water Resources.

7 PRESIDING COMMISSIONER PERNELL: You
8 have to get really close to the mic.

9 THE WITNESS: My previous experience
10 before coming to the Energy Commission has been 20
11 years with the Department of Water Resources in
12 power plant construction management and as a
13 utility resource planner, electric utility
14 resource planner, as well as a supervisor in the
15 cost allocation for the state water project.

16 I currently hold a position as a planner
17 II with the California Energy Commission.

18 BY STAFF COUNSEL WILLIS:

19 Q Okay. Did you prepare or assist in
20 preparing the testimony entitled Soil and Water
21 Resources in the staff assessment?

22 A I did.

23 Q And did you prepare an addendum to the
24 supplement?

25 A I did.

1 Q Do you have any corrections to your
2 testimony tonight?

3 A Yes, I have one small correction.

4 Q And what is that?

5 A That is on page 5.86 of my staff
6 assessment on paragraph three, second sentence.
7 It's referring to the drought years of 1991 and
8 1992. The current text says 1922.

9 Q Thank you, and do the opinions contained
10 in your testimony represent your best professional
11 judgment?

12 A Yes.

13 Q Could you briefly describe the water
14 requirements for this project.

15 A As proposed, if the applicant runs the
16 Tracy peaker project for 8,000 hours per year,
17 they will use approximately 30 acrefeet of water
18 per year.

19 Q And what would the water be required
20 for?

21 A The majority of the water, approximately
22 27 1/2 acrefeet, would be used for evaporative
23 cooling. The remaining 1 1/2 to 2 acrefeet would
24 be used for other plant processes.

25 Q And would that be a non-potable use?

1 A The water is surface water of non-
2 potable condition.

3 Q Are there also potable water
4 requirements?

5 A There are potable water requirements for
6 staff at the plant and for the sanitary and
7 emergency stations, sanitary of course being rest
8 rooms, and the emergency stations at the plant.

9 Q And what source of water is the
10 applicant proposing?

11 A The only source of water the applicant
12 is proposing is water from the Delta Mendota canal
13 through an existing turnout, piped to the plant
14 through a new 1,470-foot pipeline.

15 Q And is it your understanding that the
16 existing allocation is 136 acrefeet per year?

17 A For the 40-acre parcel that the
18 applicant owns, yes, the 100-percent water
19 allocation for that 40 acres would be 136 acrefeet
20 per year.

21 Q Now, you previously testified that the
22 water requirements would be approximately 30
23 acrefeet per year. What is the approximate
24 requirement of other power plants that might be
25 proposed through the Energy Commission?

1 A There are two other power plants in the
2 vicinity of the Tracy peaker project: the East
3 Altamonte energy facility, which will use anywhere
4 from 4,600 acrefeet a year to 7,000 acrefeet per
5 year. There is also the Tesla power plant which I
6 believe is in the area of about 5,000 acrefeet per
7 year.

8 Q Thank you. Did you analyze the use of
9 alternative sources of water?

10 A Yes, I did.

11 Q And what were those?

12 A We looked at the use of reclaimed water
13 from the Tracy wastewater treatment plant, and
14 also the use of groundwater.

15 Q And what were the results of your
16 analysis?

17 A Both analyses would be more expensive
18 and there would be potential environmental
19 impacts.

20 Q Will the use of the proposed water
21 source pose an impact to groundwater supplies, if
22 your professional opinion?

23 A No.

24 Q We have heard and we know that the City
25 of Tracy has expressed concerns that under certain

1 conditions the proposed project may utilize
2 groundwater from the Biomass plant. Will the
3 proposed project be allowed to use groundwater?

4 A Their application states equivocally
5 that their only source of water will be from the
6 Delta Mendota canal. Currently as it sits, there
7 are no facilities, pipelines or wells located on
8 the site where they would be able to use
9 groundwater.

10 Q Is it possible the plant could operate
11 at a lower efficiency and without using the
12 evaporative cooling system?

13 A The applicant has stated that in the
14 very unusual circumstance that there would be no
15 surface water available, that they would curtail
16 operation at the plant where no evaporative
17 cooling water would be necessary. As a peaker
18 plant, the evaporative cooling water is for
19 efficiency purposes only, and they can operate
20 without the use of their evaporative coolers.

21 Q Would staff be willing to propose a
22 condition that would assure that groundwater would
23 not be used?

24 A Staff would not have a problem with an
25 additional condition that no groundwater would be

1 used.

2 Q In your professional opinion, would the
3 proposed plant create significant adverse impacts
4 to neighboring farms?

5 A No, it would not.

6 Q And why is that?

7 A Right now the existing property has an
8 allocation of 136 acrefeet per year. As proposed,
9 the applicant is not requesting to use any
10 additional water from the Delta Mendota canal;
11 therefore, there would be no additional impact on
12 surface water users for the farming community in
13 the area.

14 Q Did you also analyze the potential
15 cumulative impacts to water resources?

16 A Yes, I did.

17 Q And in your opinion, will this project,
18 with staff's conditions of certification, for
19 example, the mitigation that has been proposed,
20 pose a direct, indirect or cumulative significant
21 adverse impact to water resources?

22 A No.

23 Q And finally, will the proposed project
24 be in compliance with all applicable water laws,
25 ordinances, regulations and standards?

1 A Yes.

2 STAFF COUNSEL WILLIS: That's all for
3 this witness. I'd like to open him now up to
4 cross examination.

5 COMMISSIONER LAURIE: A question,
6 Commissioner Pernell?

7 PRESIDING COMMISSIONER PERNELL:
8 Commissioner Laurie.

9 COMMISSIONER LAURIE: Mr. Latteri, under
10 your page 5.8-14, the first paragraph, Compliance
11 with LORS, you make reference to California Water
12 Code 13550 and Water Resources Control Board
13 Resolution 7558; is that right?

14 THE WITNESS: That is correct.

15 COMMISSIONER LAURIE: Do you know when
16 the Plain View Water District received its
17 allocation under which it is currently operating?

18 THE WITNESS: Could you rephrase the
19 question? I didn't quite understand it.

20 COMMISSIONER LAURIE: Yes. Plain View
21 Water District -- Okay, let me ask it in the form
22 of a question. Does Plain View Water District
23 have an allocation as authorized by appropriate
24 state agencies to use fresh water, under what
25 water right do they have ownership?

1 THE WITNESS: They have a contract with
2 the Central Valley project.

3 COMMISSIONER LAURIE: Okay. Do you know
4 when that occurred?

5 THE WITNESS: No, sir, I do not.

6 COMMISSIONER LAURIE: Is it your
7 understanding that Water Code 13550 and Resolution
8 7558 is applicable only to non-allocated water
9 sources?

10 THE WITNESS: Could you repeat that
11 question, please.

12 COMMISSIONER LAURIE: Yes. Is it your
13 understanding that Water Resources Code 13550 and
14 Resolution 7558 only applies to non-allocated
15 water sources?

16 THE WITNESS: I do not know that for a
17 fact, no.

18 COMMISSIONER LAURIE: Okay, thank you.

19 HEARING OFFICER TOMPKIN: Does applicant
20 wish to ask any questions of this witness?

21 APPLICANT COUNSEL GRATTAN: No.

22 HEARING OFFICER TOMPKIN: Does any
23 intervenor have a question for this witness?

24 INTERVENOR PINHEY: Nicholas Pinhey,
25 City of Tracy.

1 HEARING OFFICER TOMPKIN: Go ahead.

2 CROSS EXAMINATION

3 BY INTERVENOR PINHEY:

4 Q You mentioned in your testimony that in
5 a reduction or a cutback of water that the plant
6 could, or I should say in a cessation of delivery
7 of water, the plant could cut back its production
8 or at least reduce its use of cooling water. Does
9 there come a point where it would have to shut
10 down as a result of lack of cooling water?

11 A To that question, I do not know for
12 sure. I do know that only in the hottest times of
13 the year would evaporative cooling be required.

14 Q Okay. Regarding the Plain View contract
15 with the US Bureau for CVP supply, would you
16 happen to know when that would be up for renewal?

17 A No, I don't.

18 INTERVENOR PINHEY: Okay, thank you.

19 CROSS EXAMINATION

20 BY INTERVENOR SARVEY:

21 Q Did you identify any events that would
22 jeopardize this water supply?

23 A I only looked at the past 12 years, in
24 terms of records, water delivery records and the
25 potential of another drought as we experienced,

1 through the 1989 through 1993 time frame.

2 Q That wasn't the 1922 one, right?

3 A Correct.

4 Q Does Plain View Water District have the
5 authority to curtail water deliveries?

6 A I don't know.

7 Q Can they terminate their contract with
8 GWF?

9 A I don't know that either.

10 Q Historically, what's the severest
11 curtailment that you have witnessed in a drought
12 year in any irrigation or water district?

13 A With my experience with DWR and their
14 contracts with their water contractors, 100
15 percent to agriculture in 1991.

16 Q Are municipalities curtailed before
17 agricultural uses in this contract?

18 A I don't know.

19 Q Are you aware of the relationship
20 between Plain View Water District and the
21 principals in the GWF siting application?

22 A GWS, I am not familiar with --

23 Q GWF.

24 A GWF? Could you restate the question,
25 please?

1 Q Sure. Are you aware of the relationship
2 between the Plain View Water District and the
3 principals in this GWF siting application?

4 A No.

5 INTERVENOR SARVEY: Thank you.

6 COMMISSIONER LAURIE: While we have
7 another gentleman approaching the dais, another
8 question, Mr. Latteri.

9 PRESIDING COMMISSIONER PERNELL:
10 Commissioner Laurie.

11 COMMISSIONER LAURIE: Under the current
12 conditions of the project or proposed conditions
13 to the project, if this project were ever to use
14 any water source other than the allocation of the
15 Plain View Water District, would they require a
16 modification to the conditions to the project?

17 THE WITNESS: Yes, they would.

18 COMMISSIONER LAURIE: Thank you.

19 CROSS EXAMINATION

20 BY INTERVENOR HOOPER:

21 Q My question -- I'm Jim Hooper. My
22 question has to do with whether you're aware of
23 other power generative plants that use the Delta
24 Mendota canal as their water source.

25 A No, I don't.

1 INTERVENOR HOOPER: And the reason I ask
2 that question, for information, is if there's a
3 catastrophic failure, are we going to lose many
4 generative plants?

5 THE WITNESS: If I may, the Delta
6 Mendota Bureau of Reclamation works in
7 coordination with the State Water Project. There
8 are two parallel canals going down to the San Luis
9 reservoir. And they trade off between one another
10 in their canal maintenance, and they also have the
11 ability -- there is a redundancy between the two
12 canals.

13 HEARING OFFICER TOMPKIN: Anything
14 further for this witness? Ms. Willis?

15 STAFF COUNSEL WILLIS: Thank you, that
16 would conclude our testimony.

17 (Thereupon, the witness was
18 excused from the stand.)

19 STAFF COUNSEL WILLIS: And we'd like to
20 move the portion of Exhibit Four and 17 that would
21 relate to water and soil resources.

22 HEARING OFFICER TOMPKIN: Any objection
23 to the sponsored testimony?

24 Hearing no objection, portions of
25 Exhibits Four and 17 relating to water and soil

1 will be admitted in evidence.

2 STAFF COUNSEL WILLIS: Thank you.

3 (Thereupon, the above-referenced sections of
4 documents marked as Staff's Exhibits 4 & 17
5 for identification were received into
6 evidence.)

7 HEARING OFFICER TOMPKIN: And at this
8 time we'll proceed to the witnesses for the
9 intervenors.

10 I think Mr. Pinhey was indicated as a
11 witness.

12 INTERVENOR PINHEY: At this point I'd
13 like to waive testimony.

14 HEARING OFFICER TOMPKIN: Thank you,
15 Mr. Pinhey.

16 Mr. Grattan?

17 APPLICANT COUNSEL GRATTAN: Mr. Pinhey,
18 by that you mean you don't want your testimony
19 subject to cross examination?

20 INTERVENOR PINHEY: I am available for
21 cross examination.

22 APPLICANT COUNSEL GRATTAN: Okay.

23 We'd like to briefly cross examine.

24 INTERVENOR PINHEY: Okay.

25 HEARING OFFICER TOMPKIN: All right.

1 At this time, then, I'll ask the
2 reporter to swear in the witness.

3 Whereupon,

4 NICHOLAS PINHEY

5 Was called as a witness herein and, after first
6 being duly sworn, was examined and testified as
7 follows:

8 CROSS EXAMINATION

9 BY APPLICANT COUNSEL GRATTAN:

10 Q Did we correctly characterize the City
11 of Tracy's concerns that it was, in fact, during
12 emergency curtailment not during drought
13 curtailment that the plant would pump groundwater?

14 A That is correct.

15 Q And have these concerns been put to rest
16 by the staff's statement that the applicant would
17 not be allowed to pump groundwater?

18 A Regarding groundwater they have. We
19 were concerned that no analysis had been
20 completed, as stated in the staff assessment.
21 There would potentially be adverse impacts, no
22 assessment had been completed of that. If
23 groundwater is never used, then the assessment is
24 not necessary and that satisfies that area of our
25 concern.

1 Q Thank you very much.

2 APPLICANT COUNSEL GRATTAN: That's all.

3 HEARING OFFICER TOMPKIN: Any questions
4 from any other party?

5 Thank you, Mr. Pinhey.

6 THE WITNESS: Thank you.

7 APPLICANT COUNSEL GRATTAN: Thank you.

8 (Thereupon, the witness was
9 excused from the stand.)

10 HEARING OFFICER TOMPKIN: Mr. Grattan?

11 APPLICANT COUNSEL GRATTAN: Are all the
12 intervenors through? No.

13 HEARING OFFICER TOMPKIN: Mr. Pinhey,
14 were you planning to submit your declaration as
15 testimony?

16 INTERVENOR PINHEY: Yes, I'd like to
17 enter my direct testimony into the record, and
18 it's listed as Exhibit One on the city's list of
19 exhibits. I do have copies, if need be.

20 HEARING OFFICER TOMPKIN: Okay. I think
21 we have copies. What I'll do is I'll mark your
22 declaration as Exhibit 22 for identification.

23 (Thereupon, the above-referenced
24 document was marked as Staff's
25 Exhibit 22 for identification.)

1 HEARING OFFICER TOMPKIN: And is there
2 any objection to the written testimony?

3 APPLICANT COUNSEL GRATTAN: No
4 objection.

5 STAFF COUNSEL WILLIS: None.

6 HEARING OFFICER TOMPKIN: Exhibit 22
7 will be admitted in evidence.

8 INTERVENOR PINHEY: Thank you.

9 HEARING OFFICER TOMPKIN: Thank you.

10 At this time, then, we'll proceed to the
11 next and last -- Mr. Brattan?

12 APPLICANT COUNSEL GRATTAN: If I might,
13 I neglected to request to enter the soils portion,
14 the ag and soils portion of the testimony that was
15 heard. We entered the water testimony but we
16 didn't enter the soils, and this is Section 8.9 of
17 the original application, which is Applicant's
18 Exhibit One, and Section 3.9 of the supplement to
19 the application, which is Applicant's Exhibit Two.

20 HEARING OFFICER TOMPKIN: And those are
21 separate, new and separate documents?

22 APPLICANT COUNSEL GRATTAN: They have
23 already been -- They're already exhibits, yes.

24 HEARING OFFICER TOMPKIN: They're
25 portions of existing exhibits.

1 APPLICANT COUNSEL GRATTAN: Yes.

2 HEARING OFFICER TOMPKIN: Are there any
3 objections to Sections 8.9 and 3.1, with respect
4 to soil? Hearing no objection, those sections
5 will be admitted in evidence.

6 (Thereupon, the above-referenced sections of
7 documents marked as Staff's Exhibits 1 & 2 for
8 identification, were received into evidence.)

9 HEARING OFFICER TOMPKIN: All right.
10 Then at this point, we'll move on to the topic
11 area of Socioeconomics.

12 Mr. Grattan?

13 APPLICANT COUNSEL GRATTAN: Yes. Is
14 Kati McKinstry still here?

15 MS. MC KINSTRY: Yes.

16 APPLICANT COUNSEL GRATTAN: Good
17 evening.

18 DIRECT EXAMINATION

19 BY APPLICANT COUNSEL GRATTAN:

20 Q Could you state for the record your
21 name, address and occupation, current employment.

22 A My name is Kati McKinstry and I live at
23 116 Flory Street in Seattle, Washington. I work
24 for URS. I'm a staff environmental analyst for
25 them, and that's it, I guess.

1 Q And I know you previously attached your
2 qualifications to your testimony. Could you
3 briefly give us your experience and
4 qualifications.

5 A I have a bachelor's and master's of arts
6 degree, I have a master's and bachelor's in
7 economics with a specialty in environmental
8 studies and natural resources. I have been
9 working in this industry for about five years,
10 doing socioeconomic analyses for different types
11 of projects, including several other power plants
12 in California.

13 Q And have you prepared and previously
14 submitted written testimony in this case?

15 A Yes, I have.

16 Q And what did that testimony relate to?

17 A It related to the socioeconomic impacts
18 attributable to the Tracy peaker project.

19 Q Are you sponsoring any exhibits at this
20 hearing?

21 A Yes, I am. I am sponsoring Section 8.8
22 and Appendix I of the original application,
23 Section 3.8 of the supplement, Data Response 27 in
24 the property value study.

25 Q Thank you, and you've previously

1 submitted testimony under oath. Can you affirm
2 that testimony for us here today under oath?

3 A Yes, I can.

4 Q Do you have any corrections or
5 modifications to the testimony?

6 A No, I don't.

7 Q And can you briefly summarize that
8 testimony.

9 A I reviewed the impacts of the
10 construction and operation of the project on the
11 local economy, the schools, public services,
12 housing and infrastructure. I also reviewed
13 environmental justice considerations that would be
14 related to the project.

15 I concluded that no significant adverse
16 impacts would result from the project,
17 individually or cumulatively, and also, my
18 conclusion was that no environmental justice
19 impacts would result from the project.

20 I'll point out a few items. The first
21 one is that due to construction of the project and
22 the increase in assessed value in the county that
23 would be attributable to the project, the property
24 tax revenues to the county would increase and part
25 of that revenue would go to schools throughout the

1 county.

2 The second point I wanted to make has to
3 do with the impact on school enrollment, and
4 during -- First of all, during construction we
5 anticipate that most of the -- or actually, all of
6 the construction force would likely commute on a
7 daily basis to the project site. So, in other
8 words, we're not anticipating any relocation to
9 the site and, therefore, there would be a
10 negligible impact on school enrollment in the
11 area.

12 Now, for operation of the project, there
13 will be one employee at the plant. That employee
14 will not be new. He or she will be transferred
15 from another facility. So, in effect, there will
16 be no additional employment, net employment with
17 operation of the project. If that employee moves
18 to the area, there might be zero to two more
19 students, but it would not be a significant impact
20 on the school districts in the area.

21 And the last thing I wanted to do is
22 briefly touch on environmental justice and give a
23 little definition of it. President Clinton in
24 1994 signed an executive order, Number 12898, and
25 it defined environmental justice impacts. And

1 basically what it did was direct federal agencies
2 to identify and assess any disproportionate high
3 and adverse impacts on the environment or the
4 health of minority or low-income people that would
5 result -- This is a long sentence -- that would
6 result from any of their federal actions or
7 projects.

8 So what that means is that for this
9 project we need to look at disproportionate high
10 and adverse impacts on those particular
11 populations. When we looked at that and did that
12 analysis for this project, we did not find any
13 impacts, we did not find any environmental justice
14 impacts would result.

15 Q Does that conclude your testimony and
16 summary of it?

17 A That concludes my summary, yes.

18 Q May I ask, you concluded -- you just
19 stated you concluded there were no environmental
20 justice impacts. Is that because you didn't
21 identify or the data didn't show a minority or
22 low-income population?

23 A The first step in doing an analysis like
24 that is to see if there are any populations in the
25 area that are susceptible to environmental justice

1 impacts, so it's kind of a screening analysis.
2 You look at census data to see how minority
3 persons or persons of low income are living in the
4 area.

5 What we did is we looked at the census
6 tracts in the project area, and we found that none
7 of the census tracts within six miles of the
8 project site were considered minority or low
9 income, with the exception of a very small part of
10 one census tract. And when we looked closer at
11 that census tract, the population center in that
12 census tracts was, in fact, outside of the six-
13 mile radius.

14 So our conclusion in the socioeconomic
15 section of the AFC was that no, it is not likely
16 that there are any environmental justice
17 populations near the site. So because that was
18 our conclusion, then yeah, we don't have to go to
19 the next step, which is looking at the other
20 environmental impacts to see if they're
21 disproportionate. So that's how we came to that
22 conclusion.

23 Q And, just to wrap up, your study showed
24 there were approximately a million dollars of
25 property tax paid by this plant per year?

1 A Yes. The project would cause, would
2 result in an increase of about a million dollars
3 in property tax revenue annually.

4 Q And you showed no impact on schools or
5 infrastructure from the project.

6 A Not in terms of increased enrollment or
7 increased demand for school teachers or other
8 types of school-related employment.

9 Q Thank you. And have you had a chance to
10 review the staff assessment?

11 A Yes, I have.

12 Q And do you agree with its analysis,
13 excuse me, do you agree with its conclusions and
14 conditions?

15 A Yes, I do agree with the conclusions in
16 the staff assessment.

17 Q Thank you.

18 COMMISSIONER LAURIE: Question,
19 Commissioner Pernell?

20 PRESIDING COMMISSIONER PERNELL:
21 Commissioner Laurie.

22 COMMISSIONER LAURIE: And, Ms. Willis,
23 please listen, because I'll ask you to address the
24 issue in your questioning.

25 Now, ma'am, in the proposed conditions

1 to the project -- Mr. Grattan, if you can turn to
2 5.7-18 -- Socio 1 says, "The project owner, his
3 contractors and subcontractors shall recruit
4 employees and procure materials and supplies
5 within San Joaquin County unless exceptions one,
6 two, three, and four."

7 As you read that, is it your
8 understanding that your obligation, under that
9 condition, would be to recruit all employees and
10 procure all materials and supply, regardless of
11 cost, unless one of the exceptions is found? Is
12 that your understanding of this condition?

13 THE WITNESS: I read it, and my
14 understanding is yes, that is true, as long as --
15 unless one of those four conditions holds, yes.

16 COMMISSIONER LAURIE: Okay, that's fine.

17 Then, Ms. Willis, I'm confused by the
18 question or by the proposed condition, and this
19 condition in order to be enforceable, has to be
20 really clear, so perhaps you can address the
21 intent of the condition with the witness.

22 Thank you.

23 PRESIDING COMMISSIONER PERNELL: I have
24 a question also.

25 I thought I heard you say that because

1 of the -- there wouldn't be any additional impacts
2 to schools because the plant would only have one
3 employee; is that correct?

4 THE WITNESS: That's correct, and that
5 employee would be transferred actually from
6 another operation, a plant operation of the
7 applicant's. That probably excludes maintenance
8 workers who come in on a contract basis once a
9 year, twice a year. I'm not the right person to
10 talk to about that, but that would be on a
11 contract basis.

12 We would have -- It's my understanding
13 that we would have one employee there on a
14 permanent day-to-day basis.

15 PRESIDING COMMISSIONER PERNELL: Okay,
16 and in your analysis, in terms of environmental
17 justice, did you look at income levels or just
18 population?

19 THE WITNESS: I looked at poverty
20 levels. I looked at percentage of persons who
21 live below the poverty level in each of the census
22 tracts within the six-mile radius. We looked
23 at -- I looked at 1990 data, because that type of
24 data was not yet available from the 2000 census
25 when we did the analysis.

1 PRESIDING COMMISSIONER PERNELL: And did
2 you, in terms of poverty levels, were there any --
3 did you find any populations that were below the
4 poverty level?

5 THE WITNESS: There were residents who
6 were below the poverty level. What we looked at
7 was by census tract, what was the percentage of
8 residents in that census tract that lived below
9 the poverty level. And, based on that percentage,
10 we determined whether that census tract would be
11 low income or not.

12 So in this case, we used 50 percent, and
13 in each of the census tracts, the percentage of
14 persons living below the poverty level was lower
15 than 50 percent.

16 PRESIDING COMMISSIONER PERNELL: Thank
17 you.

18 HEARING OFFICER TOMPKIN: Did staff wish
19 to question this witness?

20 STAFF COUNSEL WILLIS: No, we don't.

21 HEARING OFFICER TOMPKIN: Does any
22 intervenor have questions for this witness?

23 CROSS EXAMINATION

24 BY INTERVENOR SARVEY:

25 Q Referring to the condition and

1 certification that Mr. Laurie alluded to, I just
2 wanted to make sure that that labor from San
3 Joaquin County was union labor, correct? Is that
4 true?

5 A I don't know of any agreements that the
6 applicant has at this point with unions.

7 Q Can you explain the difference to me
8 between a census tract and a census block?

9 A Sure. A census tract is made up of
10 several census blocks. A census block is the
11 lowest geographic area that the census collects
12 data for.

13 Q So the block is the smaller area.

14 A Yes.

15 Q Okay. When you did your demographic
16 analysis, did it include census blocks or only
17 census tracts?

18 A It only included census tracts. We were
19 following some recent examples of other analyses
20 that have been done.

21 Q On the federal rules of environmental
22 justice, is it census tracts or census blocks that
23 they look at?

24 A Well, the environmental justice
25 guidelines that I have seen are very general, and

1 I know that we're starting to see more
2 environmental justice studies that use blocks, but
3 I'm not sure if they actually -- I can't tell you
4 for sure if they give that specific direction to
5 use either tracts or blocks, so I can't answer
6 that, I guess.

7 Q Are you aware of any civil rights
8 complaints on file with the EPA or DOE,
9 challenging the CEC siting process?

10 COMMISSIONER LAURIE: Sir, is your
11 question currently on file? Is your question any
12 complaints currently on file?

13 INTERVENOR SARVEY: Yes, currently on
14 file, I'm sorry, Mr. Laurie.

15 THE WITNESS: I don't think I have
16 enough knowledge about other projects at this
17 point to answer.

18 INTERVENOR SARVEY: Okay, thank you.

19 BY INTERVENOR SARVEY:

20 Q Can you identify the small tract that
21 you said lay out -- or I guess it would be the
22 block that lay outside the six-mile radius, what
23 the location of that was?

24 A It's north of the project site, it's
25 right at the outside of the area, the six-mile

1 circular area that we looked at, so it's about six
2 miles from the site, six miles north of the site.

3 Q Do you have a street address or any
4 geographical landmark that I could reference that
5 to?

6 A Not here. There is a figure in the AFC
7 that shows it pretty clearly.

8 Q Did you examine the block of farm
9 workers on Tracy Boulevard and Linne Road?

10 A No, I didn't.

11 Q Do you know the minority breakdown of
12 the employees at Owen Brockway Glass?

13 A No, I don't.

14 Q Is your -- I'm understanding that GWF
15 will employ a full-time security guard. Will that
16 security guard come from San Joaquin County?

17 A I can't answer that; I don't know the
18 answer.

19 INTERVENOR SARVEY: Thank you very much.

20 INTERVENOR HOOPER: I'm Jim Hooper. I
21 think I have two questions here.

22 CROSS EXAMINATION

23 BY INTERVENOR HOOPER:

24 Q Are there standard guidelines for
25 evaluation of environmental justice concerns?

1 A I'm sorry, could you repeat the
2 question, please.

3 Q Are there standard guidelines for
4 evaluation of environmental justice concerns?

5 A There are standard guidelines. Most of
6 them that I've seen are fairly general.

7 Q Okay, and did you follow those standard
8 guidelines?

9 A Yes.

10 Q Okay. And you're testifying that
11 minority or low-income people would not be
12 disproportionately impacted by adverse air
13 quality?

14 A Well, since the air quality analysis, as
15 I understand, found no significant impacts, then
16 we wouldn't have any significant proportionate air
17 quality impacts on anybody.

18 INTERVENOR HOOPER: Okay, thank you.

19 INTERVENOR PINHEY: Nicholas Pinhey,
20 City of Tracy, a quick question.

21 CROSS EXAMINATION

22 BY INTERVENOR PINHEY:

23 Q I assume the socioeconomics analysis
24 takes a look at the impacts on public services,
25 such as law enforcement; is that correct?

1 A Yes.

2 Q And in the case of heightened security
3 measures that I would assume would be required for
4 power facilities, does the analysis take into
5 account any impacts potentially on law enforcement
6 agencies within the vicinity of the facility?

7 A Yes, and I don't know the specifics of
8 the security that would be provided on site, but I
9 do know that I was in contact with the law
10 enforcement agencies in the area, and talked with
11 them over the phone about the description of the
12 project and construction worker numbers and other
13 components of the project that would give them an
14 idea of what kind of increased demand would occur
15 during construction.

16 And I have a statement in the AFC
17 section from both the fire department and the law
18 enforcement agency that they don't think that
19 there would be a significant impact on their
20 agency, in terms of increased demand.

21 Q Thank you for your response. That does
22 include the City of Tracy's Police; is that
23 correct?

24 A Let me check real quick.

25 Q Okay.

1 A I talked with the San Joaquin County
2 Sheriff's Department, the City of Tracy Fire
3 Department, and that's it.

4 Q But not the city police.

5 A I don't -- Give me one second.

6 Q Okay.

7 A Okay. I just wanted to point out, first
8 of all, that the project is actually located in
9 unincorporated San Joaquin County, so the main
10 service provider would be the sheriff. I know in
11 the section that other agencies also could serve
12 the site and the county sheriff's department does
13 have mutual aid agreements, so there is a
14 statement in the AFC that says that the sheriff's
15 department works closely with the Tracy Police
16 Department and the CHP.

17 But I think I probably only got a
18 statement about impacts from the sheriff's
19 department because it's an unincorporated area.

20 Q Yes, I understand. We would be a closer
21 responder; that's why I was using that line of
22 questioning. Thank you very much.

23 CROSS EXAMINATION

24 BY INTERVENOR SUNDBERG:

25 Q In your testimony, you stated that this

1 project was going to generate \$1.5 million in
2 property taxes. Is that money to be used for --

3 A It's one million.

4 Q One million? Excuse me. Is that money
5 to be used for security for this plant?

6 A No, that one million is increased
7 property tax revenue that goes directly to San
8 Joaquin County. The assessed value in the county
9 would increase by a certain amount because of
10 construction of the plant. So, as a proxy for the
11 increase in assessed value, we use the
12 construction cost. And then we apply the property
13 tax rate for that particular parcel to determine
14 how much the county's property tax revenue would
15 increase.

16 INTERVENOR SUNDBERG: Thank you.

17 HEARING OFFICER TOMPKIN: All right. We
18 have no further questions for this witness?

19 Mr. Grattan?

20 APPLICANT COUNSEL GRATTAN: Thank you
21 very much. I would like to bring briefly Doug
22 Wheeler up to the stand to set the record straight
23 about the permanent employment at the plant. I
24 think there might have been a little confusion
25 there.

1 Yeah, it was suggested to me maybe we
2 should move in the exhibits prior to bringing
3 Mr. Wheeler to the stand.

4 HEARING OFFICER TOMPKIN: I think that
5 would be a good idea. Why don't we conclude with
6 this witness.

7 APPLICANT COUNSEL GRATTAN: Yeah, we'd
8 like to move the testimony and my partner, Irwin
9 Karp, can read in the exhibits.

10 APPLICANT COUNSEL KARP: Okay. We'd
11 like to move the exhibits sponsored by
12 Ms. McKinstry into evidence: Section 8.8 and
13 Appendix I of the original application, August
14 2001, so that's a portion of what has already been
15 identified as Exhibit One; Section 3.8 of the
16 October 2001 supplement that's already been moved
17 in as Exhibit Two.

18 And a new exhibit, I believe, Madam
19 Hearing Officer, we'd now be on Number 23; is that
20 correct?

21 HEARING OFFICER TOMPKIN: That is
22 correct.

23 APPLICANT COUNSEL KARP: Okay. Data
24 Response 27 would be identified as Exhibit 23.

25 Now we're going to have a minor miracle

1 at this late hour. Exhibit 24 is the real
2 property value assessment study submitted
3 January 11th, 2002, and by some chance that is
4 also Number 24 on the applicant's exhibit list, so
5 we'd like to move that in as well.

6 HEARING OFFICER TOMPKIN: Okay. The
7 assessment will be marked as Exhibit 24 for
8 identification.

9 (Thereupon, the above-referenced
10 document was marked as Staff's
11 Exhibit 24 for identification.)

12 HEARING OFFICER TOMPKIN: And the Data
13 Response is marked as Exhibit 27 for
14 identification --

15 APPLICANT COUNSEL KARP: It's Data
16 Response 27 marked as Exhibit 23.

17 HEARING OFFICER TOMPKIN: Thank you for
18 that correction.

19 (Thereupon, the above-referenced
20 document was marked as Staff's
21 Exhibit 23 for identification.)

22 HEARING OFFICER TOMPKIN: Is there any
23 objection from any party to Exhibits 23 and 24?

24 Hearing no objection, Exhibits 23 and 24
25 are admitted in evidence.

1 (Thereupon, the above-referenced sections and
2 documents marked Staff's Exhibits 1-2 & 23-24 for
3 identification, were received in evidence.)

4 HEARING OFFICER TOMPKIN: Thank you.
5 The witness may step down.

6 (Thereupon, the witness was
7 excused from the stand.)

8 APPLICANT COUNSEL GRATTAN: Just briefly
9 for one question, Mr. Wheeler.

10 COMMISSIONER LAURIE: Mr. Wheeler, why
11 don't you just take the podium.

12 APPLICANT COUNSEL GRATTAN: Yeah.
13 Whereupon,

14 DOUGLAS WHEELER
15 Was called as a previously duly sworn witness
16 herein and was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY APPLICANT COUNSEL GRATTAN:

19 Q Mr. Wheeler, could you outline or could
20 you describe for the committee and the public what
21 the staffing requirements for operation of the
22 Tracy peaker plant will be?

23 A Yes, I can. This is a peaking plant and
24 will not operate all the time. When the plant is
25 dispatched, this would be the date prior to the

1 intended use of the plant. Operators or a single
2 operator would be dispatched from one of the
3 existing operating GWF plants to operate the
4 peaking plant. That would also be the case for
5 maintenance, periodic maintenance activities on
6 the plant. The annual maintenance would be done
7 by contract labor, so there would be no permanent
8 employees assigned to the peaking facility.

9 There will be a 24-hour security
10 personnel. That personnel would be contracted.

11 Q Thank you very much, and one further
12 question: With respect to construction of the
13 plant, does GWF or its EPC contractor have a
14 project labor agreement?

15 A Yes, we do. The project labor agreement
16 has been executed, and pursuant to that agreement
17 GWF will be using union labor to construct the
18 facility.

19 APPLICANT COUNSEL GRATTAN: That's
20 basically all I have and we thank the committee.

21 HEARING OFFICER TOMPKIN: Any questions
22 for Mr. Wheeler?

23 CROSS EXAMINATION

24 BY INTERVENOR SARVEY:

25 Q Mr. Wheeler, I'd like to ask you if the

1 annual maintenance worker would be a union person.

2 A The annual maintenance contract would be
3 performed by -- with union labor. That has been
4 the GWF practice.

5 Q And is --

6 INTERVENOR SARVEY: Am I limited just to
7 his testimony or can I deal with socioeconomics in
8 general?

9 HEARING OFFICER TOMPKIN: We're dealing
10 with this witness's testimony at this time.

11 INTERVENOR SARVEY: Okay. That will be
12 all.

13 Thank you, Mr. Wheeler.

14 HEARING OFFICER TOMPKIN: If nothing
15 further, we'll proceed to the staff witness.

16 (Thereupon, the witness was
17 excused from the stand.)

18 STAFF COUNSEL WILLIS: Thank you. The
19 staff calls Sally Salavea.

20 Whereupon,

21 SALLY SALAVEA

22 Was called as a witness herein and, after first
23 being duly sworn, was examined and testified as
24 follows:

25 HEARING OFFICER TOMPKIN: Go ahead.

1 DIRECT EXAMINATION

2 BY STAFF COUNSEL WILLIS:

3 Q And could you please state your name for
4 the record.

5 A Sally Salavea.

6 Q And could you please spell your last
7 name.

8 A S-a-l-a-v-e-a.

9 Q Was a statement of your qualifications
10 attached to your testimony?

11 A Yes, it was.

12 Q Could you briefly state your educational
13 experience as it pertains to socioeconomic
14 analysis?

15 A I have over 12 years of experience as an
16 environmental analysis consultant, and have
17 prepared numerous environmental documents
18 addressing potential significant environmental
19 impacts of projects as proposed. Specifically
20 related to socioeconomics, I have prepared several
21 population, employment, housing sections as part
22 of overall environmental analyses.

23 Q Did you prepare the testimony entitled
24 Socioeconomics in the staff assessment?

25 A Yes, I did.

1 Q Did you also prepare the Socioeconomic
2 section in the staff supplement?

3 A Yes, I did.

4 Q Do you have any changes to your written
5 testimony that you're proposing tonight?

6 A No, I do not.

7 Q And do the opinions contained in your
8 testimony represent your best professional
9 judgment?

10 A Yes.

11 Q When you're doing an analysis, what are
12 you looking for, for socioeconomics?

13 A In conducting a socioeconomic analysis
14 and addressing whether a proposed project would
15 result in significant impacts related to
16 socioeconomics, we look for whether a proposed
17 project would affect the economic and employment
18 conditions, public services and facilities, and
19 housing and schools.

20 Q Did you find any potentially significant
21 impacts in the area of socioeconomics?

22 A No.

23 Q Did you also perform an environmental
24 justice analysis for this project?

25 A Yes, I did.

1 Q And could you briefly describe how you
2 did your analysis.

3 A First we look at the demographics of the
4 area in question, which has been identified as a
5 six-mile radius surrounding the proposed project
6 site. And the information that we look at
7 specifically relates to minority population and
8 low-income population. Second, we identify
9 whether the proposed project would result in
10 significant socioeconomic impacts, and, if so,
11 would these impacts disproportionately affect the
12 low-income or minority populations.

13 If significant impacts were found, and
14 we found that these impacts would
15 disproportionately affect low income and minority
16 populations, we would then propose mitigation to
17 avoid or reduce to a level less significant the
18 identified impacts, or provide alternatives.

19 Q And what were the results of your
20 analysis?

21 A The results of my analysis conclude that
22 while there are pockets of minority of low-income
23 populations that exceed 50 percent overall within
24 the six-mile radius area, low-income and minority
25 populations are less than 50 percent, and the

1 proposed project would not result in significant
2 adverse impacts related to socioeconomics.

3 Q In performing an environmental justice
4 analysis, are you required to consider children as
5 an EJ population?

6 A No, we are not; however, children --
7 they are used in addressing standards related to
8 air quality and also public health, and they're
9 addressed in those sections.

10 Q Are children really then addressed the
11 sensitive receptors in those areas of air quality
12 and public health?

13 A Yes, they are.

14 Q Did you coordinate your analysis with
15 San Joaquin County staff?

16 A Yes, I did.

17 Q And did you also consult with the City
18 of Tracy staff in conducting your analysis?

19 A Yes, I did.

20 Q In your professional opinion, will this
21 project pose any significant adverse impacts in
22 the area of socioeconomics?

23 A No.

24 Q In your professional opinion, which
25 laws, ordinances, regulations and standards are

1 applicable to this project?

2 A With respect to federal laws,
3 ordinances, regulations and standards, there is
4 Executive Order 12898, which the applicant's
5 representative discussed, and this addresses
6 environmental justice, and it requires that
7 agencies identify and address any
8 disproportionately high and adverse human health
9 or environmental affects of their programs,
10 policies, and activities on minority and/or low-
11 income populations.

12 The Civil Rights Act of 1964 is another
13 LORS, federal LORS, and this prohibits
14 discrimination on the base of race, color, or
15 national origin. With respect to state laws,
16 ordinances, regulations, and standards, there are
17 California Government Code sections that relate to
18 school impact fees that are applicable to this
19 testimony. There's also California Code of
20 Regulations Section 15131 which provides that the
21 economic or social affects of a project shall not
22 be treated as significant affects on the
23 environment.

24 And with respect to local laws,
25 ordinances, regulations, and standards, there's a

1 policy, Policy Number 15 of the San Joaquin County
2 General Plan, which states that development shall
3 minimize impacts on the county's resources.

4 Q In your opinion, is this project in
5 compliance with all laws, ordinances, regulations,
6 and standards?

7 A Yes.

8 Q And earlier you heard Commissioner
9 Laurie had a question for the applicant's witness
10 regarding sociocondition number one. Could you
11 explain the intent of that condition?

12 A The intent of this condition is to, to
13 the extent feasible, it provides a record so that
14 the applicant, to the best of its ability, will
15 hire San Joaquin County employees.

16 Q Thank you.

17 STAFF COUNSEL WILLIS: I have no further
18 questions. This witness is now open to cross
19 examination.

20 HEARING OFFICER TOMPKIN: Does the
21 applicant wish to question this witness?

22 APPLICANT COUNSEL GRATTAN: Yes, I have
23 one question, and if I can ask the witness to look
24 at page 5.7.14 of the staff report that was
25 prepared, and I just want to bring something out

1 for the record.

2 CROSS EXAMINATION

3 BY APPLICANT COUNSEL GRATTAN:

4 Q According to your analysis with respect
5 to low income, that's people below the poverty
6 line, did you not find that only 8.3 percent of
7 the residents within six miles of the Tracy peaker
8 plant had incomes below the poverty level?

9 A That is correct.

10 Q And with respect to the City of Tracy
11 itself, an even lower figure, 7.3?

12 A Yes, that's correct.

13 APPLICANT COUNSEL GRATTAN: Thank you
14 very much.

15 HEARING OFFICER TOMPKIN: Are there any
16 questions by intervenors?

17 CROSS EXAMINATION

18 BY INTERVENOR SARVEY:

19 Q Do the federal guidelines identify any
20 other group, other than the ones that you've
21 already expressed, which were people of color,
22 and -- is there any other -- in the Civil Rights
23 Act, is there any other people who could possibly
24 be discriminated in terms of environmental justice
25 other than the ones that you've mentioned or

1 examined?

2 COMMISSIONER LAURIE: One moment,
3 please, before you ask the question. Sir, I would
4 ask that you ask a foundation question, because
5 you've asked regarding both Civil Rights Act and
6 federal regulations.

7 INTERVENOR SARVEY: Okay, sorry.

8 COMMISSIONER LAURIE: I would ask that
9 you ask the witness whether, in fact, there are
10 federal guidelines.

11 INTERVENOR SARVEY: Okay.

12 BY INTERVENOR SARVEY:

13 Q Are there federal guidelines that deal
14 with other -- well, in terms of -- is there
15 discrimination of environmental justice of people
16 on the basis of their age? Are you aware of it?

17 A Could you rephrase the question?

18 Q Okay.

19 COMMISSIONER LAURIE: Sir, if I may, can
20 I try?

21 INTERVENOR SARVEY: Sure, please.

22 COMMISSIONER LAURIE: Does US EPA have
23 federal regulations adopting guidelines for the
24 implementation of environmental justice?

25 THE WITNESS: Yes.

1 BY INTERVENOR SARVEY:

2 Q And does that include -- do those
3 guidelines include discrimination on the basis of
4 age?

5 A To my knowledge, no, I'm not aware of
6 it.

7 Q Okay. Do you know what the minority
8 breakdown of employees is at Owens Brockway Glass?

9 A Yes, staff did obtain that information,
10 while they did not want it to be released to the
11 public.

12 Q Okay.

13 A But I can say that the breakdown is 52
14 percent white, 48 percent minority, with respect
15 to minority.

16 Q Okay. And did you examine the block of
17 farm workers at Linne Road and Tracy Boulevard in
18 your analysis?

19 A No, I did not; however, with respect to
20 environmental justice, we look at residents and
21 not workers in an area, and minority populations
22 or low income.

23 Q What is the land area that you used to
24 determine your census tract or your census block?

25 A The affected area was identified as a

1 six-mile radius surrounding the project site.

2 Q And you, in fact, found several pockets
3 of minorities; is that correct?

4 A I wouldn't say several. There were a
5 few.

6 Q And can you identify a location for any
7 of those?

8 A A figure was provided in the testimony,
9 if that's what you're asking.

10 Q That's fine. Air pollution
11 disproportionately affects children and the
12 elderly. Did you examine the current ambient air
13 quality when you did your analysis, as far as
14 socioeconomics?

15 A Not in my testimony. That's addressed
16 in air quality, I believe.

17 INTERVENOR SARVEY: Okay, thank you.

18 CROSS EXAMINATION

19 BY INTERVENOR HOOPER:

20 Q Now, we've heard testimony that the tax
21 money will go to the County of San Joaquin. Did
22 you consider the economic impact on the City of
23 Tracy?

24 A Yes, we did.

25 Q And what did you find?

1 A Are you talking about the socioeconomic
2 impacts?

3 Q Yes.

4 A The conclusion of the testimony is that
5 the project would not result in significant
6 adverse impacts related to socioeconomics.

7 Q So the city wouldn't be spending more
8 money on police and fire for the services to the
9 project?

10 A No.

11 INTERVENOR HOOPER: Okay.

12 HEARING OFFICER TOMPKIN: There's
13 nothing further for this witness? Ms. Willis?

14 STAFF COUNSEL WILLIS: Thank you. That
15 will be all for this witness.

16 (Thereupon, the witness was
17 excused from the stand.)

18 STAFF COUNSEL WILLIS: We'd like to move
19 the section of the staff assessment and addendum
20 to the staff supplement entitled Socioeconomics
21 into the record, please.

22 HEARING OFFICER TOMPKIN: Any objection
23 to that testimony from any party?

24 Hearing no objection, the sections of
25 the staff assessment and staff supplement for

1 Socioeconomics will be admitted in evidence.

2 (Thereupon, the above-referenced sections of
3 documents marked as Staff's Exhibits 1 & 2 for
4 identification, were received in evidence.)

5 HEARING OFFICER TOMPKIN: Mr. Sarvey, I
6 think you indicated you had something to state in
7 this area?

8 INTERVENOR SARVEY: Yes. I have an
9 exhibit and a small handout and some written
10 commentary, if you'd like to hear it, or we can
11 just hand the statement out, whatever the
12 procedure is.

13 HEARING OFFICER TOMPKIN: Are these
14 documents or information that you've previously
15 provided to the parties?

16 INTERVENOR SARVEY: Yes, I have.

17 HEARING OFFICER TOMPKIN: Can you
18 identify them, please.

19 INTERVENOR SARVEY: Oh, you mean --
20 Well, I've identified it to them in previous
21 workshops, so maybe this testimony is not allowed,
22 but I'm sure Mr. Grattan will recognize it.

23 PRESIDING COMMISSIONER PERNELL: Perhaps
24 you can summarize what the document says.

25 INTERVENOR SARVEY: Well, basically the

1 document says, "Adjacent landowners including
2 Tusso, Cheng, Traina and others have
3 multigenerational wealth in land that they're
4 worked for for close to half a century. Due to
5 the TPP location, these landowners will be unable
6 to develop their property for residential uses and
7 could use as much as \$45,000 an acre."

8 "No discussion of this effect on the
9 landowners or mitigation to offset this impact was
10 brought forward. In addition, the City of Tracy
11 has spent countless hours of planning and
12 thousands of dollars to develop and process their
13 urban management plan, in accordance with State of
14 California LORS which are now rendered useless in
15 the TPP location."

16 And can I show you the handout, see if
17 it's acceptable?

18 PRESIDING COMMISSIONER PERNELL: Sure,
19 you can pass that down.

20 INTERVENOR SARVEY: The map itself lists
21 the emissions coming from East Altamonte Energy
22 Center, Tesla project, Tracy project, and the next
23 page shows the location of the required emission
24 reduction credits from the Tracy peaker plant.
25 And then the following page shows the required

1 emission reduction credits from East Altamonte.
2 And I'd just like to point out how far away all
3 these emission reduction credits are located from
4 the plant site and the area in which the emissions
5 themselves will impact.

6 And to me that is an environmental
7 justice issue, even though it's not defined as
8 people of color or any such, people of age or
9 anything like that. It's just a general comment,
10 and thank you.

11 PRESIDING COMMISSIONER PERNELL: Thank
12 you.

13 HEARING OFFICER TOMPKIN: Thank you,
14 Mr. Sarvey.

15 What I'd like to do at this point is to
16 mark the document provided by Mr. Sarvey as
17 Exhibit 25. I would maybe propose that we receive
18 a stipulation with respect to this document,
19 similar to the one we previously had for
20 Exhibit 18 that it would be admitted, subject to
21 hearsay and other objections. Is that acceptable
22 to the other parties?

23 STAFF COUNSEL WILLIS: Well, I guess our
24 feeling would be that it's basically public
25 comment and not -- I would think that our position

1 would be that this information should be taken in
2 the form of public comment as opposed to being
3 marked and entered for even, even I guess under
4 the conditions proposed.

5 First of all, I don't believe that it
6 does have anything to do with the topic that we've
7 been dealing with tonight. It has to do with air
8 quality, once again, which we'll be hearing
9 tomorrow night. And, second of all, it was just
10 presented to us tonight, and in the form of public
11 comments.

12 APPLICANT COUNSEL GRATTAN: We would
13 agree with that position.

14 HEARING OFFICER TOMPKIN: Do you wish to
15 respond, Mr. Sarvey?

16 INTERVENOR SARVEY: No objections.

17 HEARING OFFICER TOMPKIN: Then let me
18 just -- We'll mark it as public comment, then, and
19 it will not be marked as an exhibit and will be
20 simply submitted as part of the record, public
21 comment.

22 Okay. That concludes the topic sections
23 that we were dealing with this evening. I think
24 we have a couple of other matters pending.

25 Is there anything else, Ms. Willis?

1 STAFF COUNSEL WILLIS: No.

2 HEARING OFFICER TOMPKIN: Mr. Grattan?

3 APPLICANT COUNSEL GRATTAN: No.

4 HEARING OFFICER TOMPKIN: Well, we'll go
5 off the record for a moment.

6 (Thereupon, a recess was held
7 off the record.)

8 PRESIDING COMMISSIONER PERNELL:

9 Supervisor Bedford, member of the Board of
10 Supervisors for San Joaquin County, representing
11 the Fifth District.

12 Welcome.

13 SUPERVISOR BEDFORD: Thank you very
14 much. I came here tonight to address the
15 Commission. I've participated in I think every
16 meeting, with the exception of the site in the
17 Southern area and also the site, the proposed site
18 here in Tracy. I've lived in this area for over
19 50 years, I know the area well.

20 I just want to let you know that there
21 have been a lot of letters of opposition sent to
22 me at the San Joaquin County Board of Supervisors.
23 I've sat at all these hearings without comment to
24 give both GWF and the residents of San Joaquin
25 County an opportunity to understand exactly what's

1 going on.

2 San Joaquin County held a public hearing
3 where GWF and the residents could all come
4 together and ask questions of one another and
5 share their views. At the conclusion of that
6 hearing, the San Joaquin County Board of
7 Supervisors took a position of opposition in
8 regards to the GWF peaker plant. And with that, I
9 have brought a copy of the resolution, and I'd
10 like to enter that into the evidence here tonight
11 for the Energy Commission.

12 I'd also like to let you know that I do
13 not oppose the governor's energy plan in any way,
14 but I am very concerned about the people that live
15 in this area and their feelings, so with that,
16 I'll pass out the resolution and hopefully it will
17 be something that will help you make a decision as
18 to the siting of this plant, and also the
19 economics, environmental health, and all the
20 concerns that concern these people here tonight.

21 The crowds have been much larger, but as
22 this time goes on, people have other jobs, other
23 needs, it's dwindled down to a very small crowd
24 tonight. If you could have probably seen it maybe
25 a month or two months ago, you would have seen a

1 completely different perspective on what you're
2 seeing here tonight. With that, I'll share this
3 resolution with you. Thank you.

4 (Applause.)

5 PRESIDING COMMISSIONER PERNELL: Thank
6 you.

7 HEARING OFFICER TOMPKIN: Thank you.
8 This resolution will be added to the record,
9 docketed and added to the record as public
10 comment.

11 PRESIDING COMMISSIONER PERNELL: And we
12 do appreciate you sitting patiently until we got
13 through all the technical areas that we covered
14 this evening.

15 SUPERVISOR BEDFORD: Thank you very
16 much.

17 PRESIDING COMMISSIONER PERNELL: That is
18 appreciated by the committee, as well as the
19 Commission.

20 HEARING OFFICER TOMPKIN: The first
21 speaker is Michael Boyd, and could you please
22 spell your last name.

23 MR. BOYD: Michael Boyd. That's
24 B-o-y-d.

25 PRESIDING COMMISSIONER PERNELL: And let

1 me just set some parameters. The hour is late and
2 we have a number of speakers, so we would ask that
3 you be brief.

4 MR. BOYD: I'll be very brief.

5 PRESIDING COMMISSIONER PERNELL: Thank
6 you.

7 MR. BOYD: First, I would like to
8 request that tomorrow's hearings and the
9 forthcoming hearings, if you would allow an
10 earlier time for the public to give their comment.
11 I think a lot of people showed up tonight that
12 have left that wanted to get their comments on the
13 record, but they couldn't stay, so I'm just
14 reiterating what I asked before privately, if you
15 could provide a better opportunity for the public
16 to comment earlier in the hearing process, during
17 the meeting, I think that you'll get more input.

18 Basically, what I wanted to address is I
19 have provided written testimony to you and it's
20 been docketed, and so -- and there are some parts
21 that obviously you're not going to allow me to
22 make part of the evidentiary record. So what I'm
23 going to do is just read the part that I think,
24 under public comment where obviously that's
25 probably where the most appropriate part of the

1 testimony is.

2 And basically, the written testimony is
3 provided in the form of a series of questions and
4 answers under each of the topic areas to make it
5 easier for everyone concerned to understand
6 intervenor's -- in this case, I'm working for
7 Mr. Sarvey here -- intervenor's testimony and
8 provide a list of questions for staff, applicant,
9 and other intervenor witnesses, in advance of the
10 evidentiary hearing.

11 COMMISSIONER LAURIE: Well, a question,
12 Mr. Boyd -- Commissioner Pernell, if I may?

13 PRESIDING COMMISSIONER PERNELL: Yes,
14 Commissioner Laurie.

15 COMMISSIONER LAURIE: Okay. How long is
16 your statement, Mr. Boyd?

17 MR. BOYD: Just one page.

18 COMMISSIONER LAURIE: Thank you.

19 MR. BOYD: And then two sentences, so --

20 COMMISSIONER LAURIE: Okay.

21 MR. BOYD: -- like I said, it's very
22 short.

23 But now I've got to go back to where I
24 was -- Okay. It should be clearly understood,
25 however, that intervenor's good faith effort to

1 comply with CEC regulations does not constitute
2 approval or acceptance of the adequacy of CEC's
3 rules and procedures.

4 On the contrary, intervenor's position
5 is that there is an ample growing body of
6 objectively based information and evidence in this
7 project's administrative record, as expressly
8 defined by CEQA, to demonstrate that intervenor
9 and other members of the public have bene and are
10 continuing to be deprived of our statutory right
11 to well-informed and meaningful participation in
12 their constitution rights to the benefits bestowed
13 on the public by the CEQA statutory scheme, along
14 with but not limited to equal protection and
15 procedural due process violations. Thank you.

16 PRESIDING COMMISSIONER PERNELL: Thank
17 you, Mr. Boyd.

18 HEARING OFFICER TOMPKIN: Our next
19 speaker will be Susan Sarvey.

20 MS. SARVEY: Hi, Susan Sarvey.

21 PRESIDING COMMISSIONER PERNELL: Good
22 evening.

23 MS. SARVEY: Good to see you all again.

24 PRESIDING COMMISSIONER PERNELL: Do you
25 know that guy right there?

1 MS. SARVEY: Oh, yeah, you know. I wish
2 he'd take out the garbage, but anyway --

3 (Laughter.)

4 MS. SARVEY: Last time I saw you,
5 Commissioner Pernell, you told me that you're not
6 in the habit of siting plants where the Board of
7 Supervisors and the county and the city are both
8 opposed, and so --

9 PRESIDING COMMISSIONER PERNELL: Did I
10 tell you that?

11 MS. SARVEY: Yes, you did, sweetie, on
12 the record, on the record.

13 (Laughter.)

14 MS. SARVEY: You did, so --

15 PRESIDING COMMISSIONER PERNELL: So I'm
16 not in the habit --

17 MS. SARVEY: Just wait, babe.

18 PRESIDING COMMISSIONER PERNELL: Okay.

19 MS. SARVEY: I'm not done. The best is
20 yet to come. Mr. Bedford came from the county to
21 tell you that they are opposed. I have a
22 unanimous resolution from the City Council of
23 Tracy saying they are completely and totally
24 opposed to this plant. Unanimous: every single
25 councilperson. So you have a unanimous Board of

1 Supervisors and a unanimous City Council who are
2 saying just say no.

3 Now, I understand there are a lot of
4 union people here who really want this plant
5 built. And I want you to understand that I
6 respect their need to work. You need to ask them
7 where they live and what their address is, and
8 know that I have docketed with Roberta 1200
9 petitions that are completely opposed of voting
10 people who live in the City of Tracy. And before
11 this hearing is over, I'm going to be bringing you
12 even more. They're being signed daily. We are
13 not giving up. We will be heard.

14 You told me to get you a resolution.
15 You've got two. Two, baby, just for you.

16 PRESIDING COMMISSIONER PERNELL: Well,
17 for the record, I don't recall ever telling you go
18 get me a resolution --

19 (Laughter.)

20 PRESIDING COMMISSIONER PERNELL: -- or
21 any of the other things you're stating, but you
22 have a right to say that.

23 MS. SARVEY: Well, at the last hearing I
24 asked you had you ever approved a power plant
25 where everyone was against it, and you told me

1 that you were not in the habit of approving plants
2 where the city and the county both were opposed.

3 My husband then said have you ever done
4 it. And you said there was one instance that you
5 could think of. And I'm not trying to be
6 argumentative, but I think you need to read our
7 last meeting when you came here, those minutes.
8 Because you and I did discuss this, and I made it
9 a point to go and get what you asked for.

10 PRESIDING COMMISSIONER PERNELL: Well,
11 we have a record and I'll make it a point --

12 (Laughter.)

13 PRESIDING COMMISSIONER PERNELL: -- to
14 review that record.

15 MS. SARVEY: So my question now is, if a
16 resolution from the City Council and the Board of
17 Supervisors is not good enough, and 1200
18 petitions, how many more do I have to go get? Do
19 I have to get the entire city to sign before we
20 will be heard? Or will it just not matter at all?

21 PRESIDING COMMISSIONER PERNELL: Well, I
22 think you're being heard now, so let's --

23 (Laughter.)

24 MS. SARVEY: Well, there's a difference
25 between being heard and it going in one ear and

1 out the other, because you've already made up your
2 mind, and that's what I'm concerned about.

3 And I got -- I respect you, but I must
4 tell you, I am really, deeply concerned, along
5 with the people that are working with me that have
6 signed these petitions. We are not lawyers, we
7 are not used to this process. We are people that
8 have taken a lot of time out of our personal lives
9 to try to meet your standards and rules and
10 questions and everything that you have. And it
11 was very upsetting to us that our witnesses and
12 our testimony is being suppressed.

13 And so, in the interest of fairness --
14 not just for me and my husband, but to GWF,
15 they've changed their assessment three times -- I
16 think you should say, in the interest of justice
17 and making a fair, rationale, reasonable, educated
18 decision, everybody gets to have their witness,
19 everybody gets to be cross examined. Everything
20 is discussed and fully aired, so we don't feel
21 like we're railroaded and we were silenced over
22 some legal technicality. Thank you.

23 PRESIDING COMMISSIONER PERNELL: Thank
24 you.

25 (Applause.)

1 HEARING OFFICER TOMPKIN: Our next
2 speaker will be Wayne Livingston, and could you
3 please spell your name.

4 MR. LIVINGSTON: Yes. My name is Wayne
5 Livingston. Livingston, L-i-v-i-n-g-s-t-o-n, and
6 I'm one of all those union people. I do speak in
7 favor of the project. I do reside in Manteca,
8 California. It's just down the road a ways here,
9 about ten miles to the east.

10 I'd like to speak for a couple of things
11 that came up tonight on the workers themselves,
12 the electricians. I can only speak for the
13 electricians. We're anticipating about 40- to
14 45,000 hours on the proposed project. The health
15 and welfare, the health insurance, the actual
16 electrical contract will pay is in excess of \$5 an
17 hour. It's an easy number to figure out.

18 I know that Tracy is anticipating a
19 Kaiser facility here. I know they're going to add
20 to the Sutter Health. Those dollars go right in.
21 These people are from this area that will be
22 working on the project, and that money does filter
23 back into it, so that's another plus.

24 Also, the apprenticeship: The
25 apprenticeship is entirely made up -- well, 99

1 percent -- San Joaquin apprentices. We're hooked
2 on to the San Joaquin Delta College. We're also
3 hooked on to the State of California Chancellor's
4 Office on the apprenticeship. And the
5 apprenticeship contribution that the contract will
6 pay I believe is \$1.22 an hour, so another number,
7 40,000 hours times that. So \$50,000 just to the
8 San Joaquin apprenticeship to train the residents
9 of San Joaquin County. Some are Tracy.

10 We have approximately about 35, 40
11 residents of our union that live here in Tracy.
12 We're elected, so we certainly don't go out of the
13 way and try to, you know, do things that will get
14 us unelected, saying that we want a project over
15 the health and safety of our members. So thank
16 you very much, and I speak in favor of the
17 project.

18 PRESIDING COMMISSIONER PERNELL: Thank
19 you.

20 HEARING OFFICER TOMPKIN: Our next
21 speaker will be Harold Timmins, and could you
22 please spell your last name.

23 MR. TIMMINS: Timmins, T-i-m-m-i-n-s.

24 I had one question and I think I heard
25 the answer, but I'm not sure and who could address

1 it, about the water. It is my understanding
2 they're not going to use any well water? Who
3 could address that?

4 APPLICANT COUNSEL GRATTAN: I can answer
5 it quickly.

6 MR. TIMMINS: Yeah.

7 APPLICANT COUNSEL GRATTAN: That's the
8 answer, that is correct, no well water.

9 MR. TIMMINS: They're absolutely going
10 to be banned from using any well water?

11 APPLICANT COUNSEL GRATTAN: We'd accept
12 a condition to that. That's how we've described
13 the project and we'd accept a condition, if the
14 Commission felt that it needed that as well.

15 MR. TIMMINS: Okay. The reason why is
16 that there is a large well on that property that
17 you propose to put the new site that belongs to
18 Kagehiro, which he's selling you the land, which
19 pumps about nine acrefeet every 24 hours.

20 And I farm right across there, and
21 anything west of there, the water is very bad. I
22 mean, when they were pumping that well and all
23 those other people put in those \$200,000 wells,
24 pumping it in the canal and sending it south and
25 selling it for \$150 an acrefoot or whatever, my

1 well went down by 35 feet in one year.

2 So I'm concerned, and that's a real
3 sticking point for me, if they're going to use a
4 lot of well water there. So if you say it's going
5 to be banned, at some point later are you going
6 to, once it's approved, say, well, we can't get --
7 we've got a drought year, are we going to get
8 water now out of this well? That's what I'd like
9 to know.

10 APPLICANT COUNSEL GRATTAN: Doug, why
11 don't you answer that question.

12 MR. WHEELER: Yes. As we stated, we
13 would, there will be no well water used in this
14 project, and we would accept a condition that
15 would prohibit any use of well water.

16 As it relates to the Russell Kagehiro
17 well, that well would be -- it's not on the 40-
18 acre parcel that we would be acquiring, that will
19 still be on the property that he will be
20 retaining.

21 MR. TIMMINS: Even though it's banned,
22 what will keep you from, if you couldn't get
23 enough water, saying, hey, Russ, can you sell us
24 some water from this well?

25 HEARING OFFICER TOMPKIN: Please step to

1 the microphone and repeat your question.

2 MR. TIMMINS: Can you sell us some water
3 from your well, you know. Will you still be
4 banned at that point?

5 MR. WHEELER: The condition that I just
6 suggested would prohibit us from using any well
7 water, which would mean we could not approach
8 Mr. Kagehiro to purchase water that would be
9 pumped from his well or any other well.

10 MR. TIMMINS: So that would jeopardize
11 your license, then, at that point.

12 MR. WHEELER: That's correct, it would.

13 MR. TIMMINS: Okay, that's all I had to
14 ask.

15 MR. WHEELER: Thank you.

16 PRESIDING COMMISSIONER PERNELL: Thank
17 you.

18 HEARING OFFICER TOMPKIN: James Miner,
19 and could you please spell your last name.

20 MR. MINER: Good evening. My name is
21 James Miner, M-i-n-e-r. Good evening,
22 Mr. Commissioner, members of staff, residents of
23 Tracy and representatives of GWF. My name is
24 James Miner and I'm here on behalf of Tracy
25 Residents for a Healthy Community. I have a

1 prepared statement I'd like to read.

2 Given that it is the mandate of
3 government to protect the public health, we, the
4 Tracy Residents for a Healthy Community, do not
5 believe that this Commission in good conscience
6 can support a project that adds pollution to an
7 area already defined as out of compliance with air
8 quality standards established by government for
9 the protection of the public health.

10 San Joaquin air quality has been
11 classified as severe by the US Environmental
12 Protection Agency. We strenuously reject the
13 notion of air quality mitigation, as prescribed in
14 the application. Purchasing offsets 200 miles
15 downwind will do nothing to mitigate pollution
16 produced locally by this plant. We therefore
17 request that the Commission reject the application
18 for certification on the grounds that this plant
19 places an unmitigated and unacceptable burden on
20 local air quality.

21 And finally, as a point of order, Tracy
22 Residents for a Healthy Community, finds the CEC's
23 efforts at public notification woefully
24 inadequate. Eleven thousand inserts in one of the
25 local papers at best reaches 18 percent of the

1 community if every single one of those are read.
2 We know of no organization or governmental
3 structure in which 18 percent is a quorum, much
4 less a majority.

5 We believe that adequate public
6 notification has not been provided to this point
7 in the application for certification process. We
8 therefore formally request that this body take out
9 a full-page advertisement in all three local
10 papers, announcing the date, time, location and
11 purpose of each meeting this body, in its
12 deliberations regarding the application for
13 certification in which public comments will be
14 accepted for the record.

15 That is all I have to say. Thank you
16 very much for your time. Good evening.

17 PRESIDING COMMISSIONER PERNELL: Thank
18 you.

19 HEARING OFFICER TOMPKIN: Twyla Summers,
20 and could you also spell your name.

21 MS. SUMMERS: It's T-w-y-l-a Summers,
22 S-u-m-m-e-r-s.

23 I just have a few statements. After
24 sitting here tonight, I'm a little surprised, out
25 of the whole State of California where you could

1 select a site to put it, you decide to put it in
2 the designated site you've chosen, amongst all the
3 homes, families that live there. And I'm appalled
4 at the disregard you have for the human life. And
5 you decide to put it there, instead of putting it
6 on 205 where people drive by and see it. You'd
7 rather have it in the City of Tracy instead of
8 putting it up on the 205. That just amazes me.

9 My next statement is, this is the first
10 time I've attended a hearing, and I honestly
11 thought that the CEC would be objective. And it's
12 perfectly clear that you're not and you already
13 have your mind made up. Thank you.

14 PRESIDING COMMISSIONER PERNELL: Thank
15 you.

16 COMMISSIONER LAURIE: And Commissioner
17 Pernell, I would just like to clarify for the
18 record that the California Energy Commission does
19 not select sites, California Energy Commission
20 only analyzes sites that are submitted upon
21 application by a developer.

22 MS. SUMMERS: I'm not saying that you
23 selected the site, but by hearing the comments
24 you've made tonight, it's perfectly clear what
25 side you're on.

1 HEARING OFFICER TOMPKIN: Todd Summers.

2 MR. SUMMERS: I'm sure most of you guys
3 have had a chance to take a look at the site map
4 that's been handed out, and I'm a little concerned
5 about the date of this map. Because on the map
6 here it doesn't show or there's no indication at
7 all of the homes that are actually located within
8 the six-mile radius.

9 I have to agree that, after listening to
10 the statements about where the gas line is and
11 where the power line comes from, the water source,
12 that the location is primarily picked because it's
13 so close to these facilities or the areas to get
14 to the water and the gas lines, where as we talked
15 about other locations that could be set across the
16 freeway, back up in the hills that are away from
17 Tracy, we have such a bad economy, so I think it
18 makes sense to me, why not create jobs for people
19 by putting in gas lines, putting in additional
20 power lines to help stimulate the economy for
21 California, and put this power plant away from the
22 homes and children and people of the City of
23 Tracy.

24 A six-mile radius is a joke, it really
25 is. The power plant could be put out in the

1 middle of Highway 12, out there by the delta,
2 where absolutely no one lives. It could be put
3 south of Tracy, amongst farmland, again, where
4 there's no population that's going to affect the
5 people of Tracy. To me, it's absurd.

6 And I have to say, I'm embarrassed that
7 the decision or part of the decision is based off
8 of what type of race you are, they're making a
9 decision that there's not enough low-income people
10 that live in the area, that we don't fall below
11 the poverty level, that it's okay to put the power
12 plant there because we don't meet that criteria.
13 It's amazing that part of the decision is based
14 off of that and not really looking at the people
15 and lives that it's affecting.

16 PRESIDING COMMISSIONER PERNELL: Let me
17 clarify something. Socioeconomics is a part of
18 the criteria that we have to analyze. It has
19 nothing to do with your statement or your
20 concerns. All of these areas are areas which we
21 have to analyze and get the facts in, go through
22 those facts and make a decision.

23 The other thing is, I mean, people are
24 coming up and saying our mind is made up. We're
25 neutral in this. We're neutral until the process,

1 we get through the process, and then we begin to
2 analyze all of the facts and the record.

3 So I'm not here trying to change your
4 mind, I'm just telling you what the process is, I
5 told you that last time I was here, and I can
6 restate that. But this committee is neutral. And
7 we will be until we complete the record and
8 analyze the facts.

9 HEARING OFFICER TOMPKIN: We have one
10 final card from Mr. Charles Tusso. I don't know --
11 Do you want to make a statement?

12 MR. TUSO: I won't take long, because
13 it's almost tomorrow, so I don't want to go until
14 tomorrow.

15 (Laughter.)

16 MR. TUSO: But anyhow, I'm just here to
17 kind of, if you can hear me, just to reiterate
18 what Mrs. Sarvey said. Our elected officials here
19 in Tracy, not just in Tracy but San Joaquin, and
20 our elected officials of Tracy represent 62,000
21 people here in Tracy. So even though we don't
22 have 62,000 signatures on a petition, we have our
23 elected officials that represent all those people
24 and they said no, absolutely unanimously no.

25 And then we have San Joaquin County

1 Board of Supervisors, who I don't know how many
2 people they represent, but they represent all of
3 San Joaquin County and all of the cities in San
4 Joaquin County, and they said no. So, you know, I
5 don't know what else we can do.

6 Then we've got all of the people that
7 need to represent us, representing us the way we
8 want them to, and I don't know what the discussion
9 is all about. It should be no, period. 550,000
10 citizens in San Joaquin County, wow, that's a lot
11 of people.

12 So anyhow, that's my comment and I
13 personally oppose it.

14 (Applause.)

15 PRESIDING COMMISSIONER PERNELL: Thank
16 you.

17 HEARING OFFICER TOMPKIN: We just
18 received one more card. Butch Webster?

19 MR. WEBSTER: W-e-b-s-t-e-r.

20 HEARING OFFICER TOMPKIN: Thank you.

21 MR. WEBSTER: I'm for the project. I've
22 looked at the project and the design. It's a
23 clean design, it's a clean plant. It will bring a
24 lot of jobs to the Tracy area. The contract
25 itself will put approximately \$17- to \$20 million

1 into the Tracy economy, and I think it's a good
2 thing for the Tracy area. That's all I have to
3 say.

4 PRESIDING COMMISSIONER PERNELL: Thank
5 you.

6 Okay. That concludes our public comment
7 period. Is there anything else from the applicant
8 at this time?

9 APPLICANT COUNSEL GRATTAN: No.

10 PRESIDING COMMISSIONER PERNELL:
11 Anything else from staff?

12 STAFF COUNSEL WILLIS: No.

13 HEARING OFFICER TOMPKIN: The
14 intervenors? Commissioner Laurie, would you like
15 to make any statement at this time?

16 COMMISSIONER LAURIE: No.

17 PRESIDING COMMISSIONER PERNELL: Hearing
18 none and seeing none, this committee meeting is
19 adjourned. Thank you.

20 (Thereupon, the hearing was
21 adjourned at 11:30 p.m.)

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission evidentiary hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said workshop, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of March, 2002.

VALORIE PHILLIPS

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